IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Tracee A. Beecroft, on behalf of herself and all others similarly situated, Plaintiff, v. ALTISOURCE BUSINESS SOLUTIONS PVT. LTD., Defendant.	Case No. 0:15-cv-02184-SRN-BRT

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND SERVICE AWARD

Pursuant to the Court's Order (ECF No. 273) and the proposed settlement agreement in this case, Plaintiff Tracee A. Beecroft, by and through counsel, respectfully moves the Court for an Order awarding Class Counsel attorneys' fees in the amount of $600,000, or one-third of the $1,800,000 common fund obtained for the benefit of the Settlement Class in the proposed settlement of this action, plus costs of $26,362.67.

Plaintiff also requests that the Court approve an incentive award to Plaintiff Tracee A. Beecroft as Class Representative, in the amount of $15,000.

In support of this Motion, Plaintiff relies upon the accompanying memorandum of law, declarations of counsel, and all the files, records, and proceedings herein.

Dated: December 14, 2017

Respectfully submitted,

TRACEE A. BEECROFT, on behalf of herself and others similarly situated

By: */s/ Mark L. Heaney*

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NOTICE OF HEARING

PLEASE TAKE NOTICE THAT, pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Court's Order (ECF No. 273), on **March 12, 2018, at 9:30 a.m.,** at the Final Approval Hearing, before the Honorable Susan Richard Nelson, in Courtroom 7B of the Warren E. Burger Federal Building & United States Courthouse, located at 316 North Robert Street, Saint Paul, Minnesota, the Plaintiff, by and through counsel, will move the Court for an Order granting Plaintiff's Motion for Attorneys' Fees and Service Award.

Respectfully submitted,

TRACEE A. BEECROFT

Dated: December 14, 2017

By: */s/ Mark L. Heaney*

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MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND SERVICE AWARD

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Through more than two years of hard-fought litigation involving adversarial motion practice, protracted discovery battles, and the review and analysis of millions of rows of data and voluminous responsive materials, Class Counsel have zealously advocated on behalf of Plaintiff and other consumers to whom Defendant made automated "Cash for Relocation" calls in alleged violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. Class Counsel's relentless efforts in prosecuting this action have culminated in an outstanding class action settlement establishing a $1.8 million, non-reversionary common fund for the benefit of 56,104 Class Members—with each claimant expected to receive at least $100 in individual relief.

Pursuant to the Court's order granting preliminary approval to the proposed Settlement, ECF No. 273, Plaintiff respectfully requests that the Court award attorneys' fees to Class Counsel in the amount of one-third of the Settlement Fund, or $600,000, in addition to costs of $26,362.67, as well as a service award of $15,000 to Plaintiff Tracee Beecroft for her efforts on behalf of the class.

This request is appropriate under the facts and circumstances of this settlement, is well-supported by the law of this Circuit, and falls in line with similar TCPA class settlements in this and other Districts. The requested fees, costs and service award are therefore reasonable, and should be approved by this Court, as further set forth herein.

I. BACKGROUND

The Telephone Consumer Protection Act

The Telephone Consumer Protection Act was enacted in response to widespread public outrage over the proliferation of intrusive, nuisance calling practices. *Mims v.*

Arrow Fin. Servs., LLC, 132 S. Ct. 740, 745 (2012). Congress found that the unique, personal nature and added cost of mobile phone use mandated strong consumer protections, specifically targeting the autodialed and prerecorded calls it considered to be a greater nuisance and privacy invasion than calls from "live" persons.[1] *In re Rules & Regs. Implementing the TCPA*, 30 FCC Rcd. 7961, at ¶ 124 (2015) ("*2015 FCC Ruling*"). Indeed, as the Supreme Court held in a different context: "The unwilling listener's interest in avoiding unwanted communication is an aspect of the broader 'right to be let alone' ... the most comprehensive of rights and the right most valued by civilized men." *Hill v. Colorado*, 530 U.S. 703, 716–17 (2000) (citation omitted).

The TCPA thus broadly prohibits making any non-emergency call to a cell phone number using an automatic telephone dialing system ("ATDS" or "autodialer") or an artificial or prerecorded voice, unless the caller has the "prior express consent" of the called party. 47 U.S.C. § 227(b)(1)(A)(iii). Despite this longstanding statutory prohibition, "unwanted robocalls and texts [continue to] top the list of consumer complaints received by the [FCC]." *2015 FCC Ruling*, 30 FCC Rcd. at 7964 ¶ 1. Enforcement of the TCPA's provisions are a necessary to help curb the proliferation of these calls, and safeguard Americans' privacy rights.

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[1] *See* S. Rep. No. 102-178, 6, 1991 U.S.C.C.A.N. 1968, 1974 (1991) (identifying legislative goal of "ban[ning] all autodialed calls, and artificial or prerecorded calls, to ... cellular phones").

Procedural Background

Plaintiff filed this action on April 27, 2015, against Defendant's Luxembourg-based corporate parent and U.S.-based sister company, Altisource Portfolio Solutions S.A. and Altisource Solutions, Inc., based on alleged TCPA violations resulting from autodialed, prerecorded-voice calls she and others received on their cell phones promoting an "Altisource" Cash for Relocation program. Compl. ¶ 7. On July 22, 2015, Plaintiff filed an amended complaint, adding another member of the "Altisource" family, Altisource U.S. Data, Inc., as a defendant, after Class Counsel's continued investigation identified it as the subscriber to the caller ID number used in the call to Plaintiff. ECF Nos. 37, 42, Am. Compl. ¶ 9. Defendants refused to engage in discovery on the ground that there was no protective order in the case, and also refused to engage in negotiating a joint protective order. On August 15, 2015, Plaintiff unilaterally moved for entry of Form 6, to which defendants opposed in writing. Defendants also moved for a stay of discovery resolution of an anticipated motion to dismiss. ECF Nos. 44, 50, 55. These were the first overt moves of a complex and time-consuming game of litigation chess. After briefing and argument, the Court granted Plaintiff's motion and denied the defendants' motion on August 31, 2015. ECF Nos. 61, 67-68.

Class Counsel pursued a rigorous investigation of jurisdictional discovery issues after the defendants filed a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction on October 6, 2015. ECF Nos. 71, 79, 137 (renewed motion). Rather than provide responsive information, the defendants moved for a protective order, to which Class Counsel not only responded with opposition briefing, but with Plaintiff's own

motion to compel such discovery, followed by a motion to compel more complete deposition testimony. ECF Nos. 89, 94, 99, 117, 119, 123, 149. Though further testimony was not ultimately ordered, the Court granted in part Plaintiff's primary motion to compel, requiring the defendants to supplement their responses with substantive discovery on key jurisdictional issues. ECF No. 124, 125, 127, 171.

It was through this jurisdictional investigation that Class Counsel solidified India-based Altisource Business Solutions Pvt. Ltd. ("Altisource") as the "Altisource" entity that physically made the calls at issue, and on May 9, 2016, Class Counsel succeeded in moving for leave to amend Plaintiff's complaint to include it as a defendant, over defense opposition.[2] ECF Nos. 161, 170, 172-173. Thus, while on September 30, 2016, the Court ultimately found after briefing and argument that it lacked personal jurisdiction over Altisource's parent and sister companies, ECF Nos. 144, 178, Class Counsel's jurisdictional investigation yielded evidence laying the groundwork for the remainder of this action and, ultimately, the substantial relief now afforded the Class.

In an effort to progress the case without additional jurisdictional motion practice, and after service through the Hague Convention, Class Counsel thereafter negotiated a compromise by which Altisource Business Solutions, Pvt. Ltd. would acquiesce to the Court's jurisdiction, but its corporate parent, S.à r.l., would be voluntarily dismissed without prejudice, subject to an agreement that Altisource would not assert its status as a

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[2] A closer corporate parent, Altisource Solutions S.à r.l. ("S.à r.l."), was likewise added as a defendant, given its more direct relationship with Altisource, the Cash for Relocation program, and dialer used. ECF No. 173, 2d Am. Compl. ¶¶ 11, 15, 20, 24-40.

stand-alone entity to attempt to avoid satisfying a judgment. ECF No. 184 at 2-3. Thus, on February 1, 2017, Plaintiff amended her complaint to assert claims against Defendant, only, and Defendant filed its answer on February 22, 2017. ECF Nos. 189, 191.[3]

Class Counsel thereafter propounded written discovery on Altisource, thoroughly investigating, among other things, the calls and Cash for Relocation program at issue, Defendant's relevant practices, indicia of knowledge or willfulness, and its affirmative defenses. ECF No. 199. Altisource produced some materials in response to these requests and subsequent conferrals, but when Defendant's production remained incomplete despite repeated conferrals between counsel (including the failure to produce *any* e-mail ESI or purported consent data as to its affirmative defense), Class Counsel filed a motion to compel, which the Court granted in part after further briefing and oral argument on May 5, 2017. ECF Nos. 195, 214, 220-221. In total, Class Counsel's discovery efforts—which included multiple sets of discovery requests to Altisource and its related companies on jurisdictional, merits, and class issues, the Rule 30(b)(6) deposition of the "Altisource" jurisdictional deponent, the issuance of relevant FOIA requests to government agencies, and third-party subpoenas to Plaintiff's carrier and Defendant's dialer provider—yielded the production by Altisource and others of tens of thousands of pages of documents and millions of rows of data relevant to Plaintiff's claims. (Burke Decl. ¶ 17.)

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[3] Altisource was served in India on October 19, 2016. ECF No. 193.

The Settlement

Soon after Plaintiff's largely successful motion to compel, Altisource's counsel were replaced, ECF No. 237, and the parties decided to begin substantively discussing the possibility of settlement. *See, e.g.*, ECF Nos. 242 (June 2017 motion to stay pending mediation). Counsel for the parties engaged in rigorous, arm's-length negotiations concerning the possible settlement of this Action over the course of many months, including, without limitation, by participating in a mediation before the Honorable Morton Denlow (ret.) of JAMS on August 17, 2017. (Burke Decl. ¶ 17.) In preparation for the mediation, the parties submitted detailed confidential mediation briefs to Judge Denlow setting forth their respective views as to the strengths of their cases. (Burke Decl. ¶ 17.) After the parties reached an agreement in principle at the end of the all-day mediation, they continued to negotiate the details of the Settlement via email and telephone, ultimately coming to the Settlement now before the Court. (Burke Decl. ¶ 17.)

The Settlement, if finally approved, will require Altisource to pay $1,800,000 into an all-cash, non-reversionary common fund from which Settlement Class Members who submit Approved Claims will receive direct Cash Awards on a *pro rata* basis after costs of notice and administration, fees and litigation costs, and any class representative service award have been deducted. ECF No. 266-1, Agr. ¶¶ 4.02, 4.04. The Settlement Class is comprised of the 56,104 persons whose cell phones Altisource called using its Aspect dialer in connection with the Cash for Relocation program, from October 16, 2013 through June 1, 2016. *Id.* ¶ 2.30; ECF No. 273 at 2. If the Settlement were to be approved as requested, Class Counsel estimate that Class Members who submit a claim form will

receive at least $100 each. (Burke Decl. ¶ 20.) Though the deadline to do so is December 29, 2017, to date, no Class Member has objected to the Settlement. (Burke Decl. ¶ 21.)

The Court preliminarily approved the Settlement on October 19, 2017, and Class Counsel now timely move for an award of fees, costs, and Class Representative award, pursuant to that order. ECF No. 273 at 8.

II. STANDARD OF REVIEW

The "common fund" doctrine applies where, as here, litigation results in the recovery of a certain and calculable fund on behalf of a group of beneficiaries. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] lawyer who recovers a common fund … is entitled to a reasonable attorney's fee from the fund as a whole[.]"); *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) ("Once a settlement has been reached in a class action, the attorneys for the class petition the court for compensation from the settlement or common fund created for the class's benefit.").

While "the court has wide discretion as to which factors to apply and the relative weight to assign to each[,]" *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 993 (D. Minn. 2005), factors relevant to the fee inquiry include: (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent,(7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the

professional relationship with the client, and (12) awards in similar cases. *Johnson v. Georgia Highway Express*, 488 F.2d 714, 719-20 (5th Cir. 1974) ("*Johnson* factors"); *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017) (acknowledging *Johnson* factors).

Courts in this Circuit utilize two main approaches in analyzing attorneys' fee requests. Under the "lodestar" method, "the hours expended by an attorney are multiplied by a reasonable hourly rate of compensation so as to produce a fee amount which can be adjusted, up or down, to reflect the individualized characteristics of a given action." *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir. 1996) (citations omitted). The "percentage of the benefit" or "percentage of the fund" method, on the other hand, contemplates a fee award that is "equal to some fraction of the common fund that the attorneys were successful in gathering during the course of the litigation. *Johnston*, 83 F.3d 241 at 45 (citations omitted). "In this Circuit, courts 'have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in class actions." *Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1064-65 (D. Minn. 2010). "It is within the discretion of the district court to choose which method to apply." *Johnston*, 83 F.3d 241 at 45.

III. ARGUMENT

The extensive, time-intensive work of Class Counsel has yielded an exemplary, $1.8 million nationwide settlement for the benefit of the Settlement Class, which warrants the fee and service award requested here. Class Counsel achieved this terrific result through over two years of difficult discovery, litigation, and negotiations—including a formal mediation before an experienced former federal magistrate judge—and all at the

risk of ultimately obtaining nothing for their tremendous effort and expense. The requested fee and incentive awards parallel those awarded in other cases, including under the TCPA, and Class Counsel's requested fee award is further supported by a lodestar cross-check, requiring only a minimal 1.45 multiplier accounting for the risk undertaken in prosecuting this action. Given these factors, the requested fee and incentive awards are reasonable and should be granted, as further detailed below.

A. The Court Should Apply the Percentage-of-the-Fund Method to Fees.

Given its simplicity of use and appropriateness in a common fund settlement based on non-fee-shifting statutory violations, the Court should use the percentage-of-the-fund approach to determining attorneys' fees.

While in the court's discretion, "[t]he Eighth Circuit [has] indicated that the percentage of the benefit method is preferred in common fund situations." *In re IBP, Inc. Sec. Litig.*, 328 F. Supp. 2d 1056, 1064 (D.S.D. 2004) (citing *Johnston*, 83 F.3d at 246); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 991 (such use is "well established"). "[T]here are advantages to utilizing the percentage method in common fund cases because of its relative simplicity of administration." *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 566 (7th Cir. 1994). As one court succinctly stated:

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

In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig., 724 F. Supp. 160, 170 (S.D.N.Y. 1989); *see also In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992)

(noting that it is easier to establish market based contingency fee percentages than to "hassle over every item or category of hours and expense and what multiple to fix and so forth"); *Johnston*, 83 F.3d at 245 n. 8 (noting "deficiencies of the lodestar process particularly as it applies to a fund case").

Moreover, it makes more sense to apply the percentage of the fund method in TCPA cases than in other contexts because the TCPA is not fee-shifting but, rather, provides for injunctive relief and pre-set statutory damages. 47 U.S.C. § 227(b)(3). Consequently, the market demands that attorneys and clients agree upon fees as a percentage of the client's recovery; typically between one-third and 40%. Indeed, the fee agreement between Class Counsel and Ms. Beecroft called for fees of 40%—less than the percentage sought from the class recovery. (Burke Decl. ¶ 16.) Use of the percentage-of-the-fund approach is therefore the most appropriate method for determining fees.

B. Relevant Factors Support Class Counsel's Requested Fee Award.

The outstanding, $1.8 million result achieved by Class Counsel for the class compared to other TCPA actions, the contingent nature of the action and risk of non-payment, as well as counsel's experience and substantial effort undertaken, all demonstrate the appropriateness of Class Counsel's requested fee of one-third of the Settlement Fund. Because the *Johnson* factors approved by the Eighth Circuit support the appropriateness of Class Counsel's fee award, Plaintiff's motion should, consequently, be granted, as further set forth herein.

1. The result achieved for the Class supports the fee request.

Where Class Counsel have negotiated a substantial, $1.8 million settlement

expected to afford claiming Class Members at least $100 each for the alleged Altisource Cash for Relocation calls they received, the eighth *Johnson* factor—the results achieved—strongly supports Class Counsel's fee request.

"[T]he result actually achieved for class members ... [is] a basic consideration in any case in which fees are sought on the basis of a benefit achieved for class members." Fed. R. Civ. P. 23, Committee Notes on Rules, *Subdivision (h)* (2003); *accord In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1104 (D. Minn. 2009). Here, the creation of a substantial, $1,800,000 Settlement Fund weighs strongly in favor of approving the requested fee. Not only is the $1,800,000 in benefits entirely non-reversionary (ECF No. 266-1, Agr. ¶ 2.33), but the recovery is significant when compared to other similar approved TCPA class action cases. Assuming that 5% of Class Members submit claims,[4] the per-claimant recovery is expected to be approximately $380 each—in a case where the underlying statute itself only provides for minimum statutory damages of $500 per violation.[5] 47 U.S.C. § 227(b)(3).

The Settlement thus compares very favorably with similar settlements of TCPA cases. *See, e.g., Markos v. Wells Fargo Bank, N.A.*, No. 15-1156, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017) (finding that cash recovery of $24 per claimant in a TCPA class

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[4] The number of actual claiming Settlement Class Members will be significantly less than 100%. *See Forcellati v. Hyland's, Inc.*, No. 12-1983, 2014 WL 1410264, at *6 (C.D. Cal. Apr. 9, 2014) ("'[T]he prevailing rule of thumb with respect to consumer class actions is [a claims rate of] 3–5 percent.'") (quoting *Ferrington v. McAfee, Inc.*, No. 10-1455, 2012 WL 1156399, at *4 (N.D. Cal. Apr. 6, 2012)).

[5] ($1,800,000 Settlement Fund - $75,000 estimated notice/administration costs - $600,000 requested attorneys' fees - $26,362.67 requested costs - $15,000 requested service award) ÷ (56,104 Settlement Class Members x 5% claims rate) = $386.29.

action is "an excellent result when compared to the issues Plaintiffs would face if they had to litigate the matter"); *Wright v. Nationstar Mortgage LLC*, No. 14-10457, 2016 WL 4505169, at *2 (N.D. Ill. Aug. 29, 2016) (granting final approval to TCPA class settlement where anticipated claimant recovery was $45); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 790 (N.D. Ill. 2015) (granting final approval to TCPA class action settlement where anticipated claimant recovery was $34.60); *Kolinek v. Walgreen Co.*, No. 13-4806, 2015 WL 7450759, at *19 (N.D. Ill. Nov. 23, 2015) (granting final approval to TCPA settlement where anticipated claimant recovery was approximately $30); *Adams v. AllianceOne, Inc.*, No. 08–0248, ECF No. 137 (S.D. Cal. Sept. 28, 2012) (approving TCPA class settlement with anticipated claimant recovery of $40); *Bellows v. NCO Fin. Sys., Inc.*, No. 07-01413, 2008 WL 5458986, at *5 (S.D. Cal. Dec. 10, 2008) (recommending granting final approval to TCPA class settlement providing for claimant recovery of $70; approved at ECF No. 38). The concrete and significant monetary benefit obtained for the Settlement Class weighs in favor of Class Counsel's requested award.

The stakes of the action further support the requested fee. This action involves 56,104 Class Members to whom Altisource allegedly made unlawful, autodialed calls to their cell phones. Had Class Members filed TCPA cases on their own, and prevailed, they would have been able to recover a minimum of $500 per statutory violation. 47 U.S.C. § 227(b)(3). Plaintiffs that can show that violations were willful may request treble damages. *Id.* But, of course, Class Members would have had to do a lot of work to obtain these results, and pay a lawyer, incur the $400 filing fee in federal court, sit for a

deposition or testify at trial, etc. Moreover, it is typical for a TCPA plaintiff to hire an expert witness to help analyze data or prove that an automatic telephone dialing system was used to make the challenged calls. *See, e.g.*, *Johnson v. Yahoo!, Inc.*, No. 14-2028, 2014 WL 7005102, at *4 (N.D. Ill. Dec. 11, 2014). This Settlement provides Class Members with the opportunity to receive money from this case without any work or expense at all. And, of course, those who wish to try to obtain more than they would receive under this Settlement can simply "opt[] out … to pursue their own claims." *Marshall v. Nat'l Football League*, 787 F.3d 502, 513 (8th Cir. 2015).[6]

2. This Action involved difficult issues, and the risk of nonpayment and not prevailing on the claims was high.

The second and sixth *Johnson* factors—the novelty and difficulty of the questions raised and contingent nature of Class Counsel's services—further support the requested fee award.

A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, including, in this case, the wholly contingent outlay of out-of-pocket sums by Class Counsel and the risks of failure and nonpayment. *See Brissette v. Heckler*, 784 F.2d 864, 865-66 (8th Cir. 1986) (finding that the district court failed to appropriately consider the "contingency factor" that, when "[counsel] agreed to represent the claimant, he obviously accepted a case with a high risk of loss, which would, if lost, produce no fee"); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 994 ("Courts have

[6] As will be explained more fully in plaintiff's motion for final approval of this settlement, class members were transparently apprised of their exclusion rights in the class notice. ECF No. 266-1 ¶ 10.01, Ex. C.

recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees.") (citation omitted).

Here, the fact that Class Counsel assumed considerable risk of nonpayment by advancing all costs and prosecuting this action on an entirely contingent fee basis for over two-and-a-half years strongly supports the requested fee. (Burke Decl. ¶ 18.) While Plaintiff is confident in the viability of her claims, success has by no means been assured, and continued litigation would have required significant additional expenditure of time, money, and resources for which Class Counsel would not be compensated should Plaintiff fail to certify a class or lose on summary judgment or at trial. These circumstances thus support Class Counsel's requested fee.

Before reaching the merits, for example, there was risk that this Court, or the Eighth Circuit on any subsequent appeal, would refuse to certify the class because of purported individualized issues of consent. Altisource contends that it obtained the phone numbers it called through a variety of disparate ways, including not only through third-party skip tracing,[7] but in relation to its role as the servicer for the bank or other owner of property after foreclosure. (Burke Decl. ¶ 18.) Likewise, the data Altisource produced did indicate that there was an (albeit small) portion of call recipients for whom Altisource may have been called or otherwise received the phone number from the consumer

[7] "Skip-tracing is the process of developing new telephone, address, job or asset information on a customer, or verifying the accuracy of such information." *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1040 (9th Cir. 2012) (affirming preliminary injunction in TCPA class case based on autodialed calls to phone numbers obtained through skip-tracing).

directly *before* itself calling the number. (Burke Decl. ¶ 18.) Consequently, Defendant's attorneys have indicated to Class Counsel on multiple occasions that individualized consent issues resulting from the various methods by which Defendant obtained the phone numbers it called constitutes a significant class certification defense, and Plaintiff could not discount the possibility that an opposition to class certification would have been successful. *Compare, e.g.*, *Bridgeview Heath Care Ctr. Ltd. v. Clark*, No. 09-5601, 2011 WL 4628744, at *5 (N.D. Ill. Sept. 30, 2011) (granting class certification), *with O'Connor v. Diversified Consultants, Inc.*, No. 11-1722, 2013 WL 2319342, at *5 (E.D. Mo. May 28, 2013) (denying class certification), and *Fitzhenry v. ADT Corp.*, No. 14-80180, 2014 WL 6663379 (S.D. Fla. Nov. 3, 2014) (same). If successfully persuaded by Defendant's arguments, the Court could have refused to certify the class, leaving Plaintiff to pursue only her individual claims, and the class with nothing.

Most importantly, the law interpreting the TCPA is in flux. A few months after Plaintiff filed her case, the FCC issued a long-anticipated, major declaratory ruling addressing several industry petitions intended to weaken the TCPA's protections, targeting not only the scope of the "prior express consent" affirmative defense Altisource raises here, ECF No. 191 at 13, but the FCC's interpretation of what constitutes an "automatic telephone dialing system" under the statute. *In re Rules & Regs. Implementing the TCPA*, 30 FCC Rcd. 7961 (2015) ("*2015 FCC Ruling*").[8] Though the FCC ruling was

[8] The definition of an "automatic telephone dialing system" under the TCPA is particularly relevant, since one of Defendant's key arguments was that its calls were only made "manually," not autodialed. (Burke Decl. ¶ 18); *see Scott v. Westlake Servs., LLC*,

favorable for consumers, it was met with immediate industry appeals for review by the D.C. Circuit, *ACC Int'l v. FCC*, No. 15-1211 (D.C. Cir.), which remain pending. And while Class Counsel believe the *2015 FCC Ruling* will be upheld, any change could have major consequences for Plaintiff's ability to successfully litigate this action. For example, if the D.C. Circuit rejects the FCC's interpretation of what constitutes an "automatic telephone dialing system" under the TCPA, then Defendant would likely argue that the purported "manual" calls made using its dialer fall outside the TCPA's provisions, potentially eviscerating Plaintiff's individual and class autodialer claims.

Moreover, the regulatory process itself can be unpredictable. For example, on October 30, 2014, the FCC issued an order re-confirming its unequivocal prior orders that fax advertisements must contain specific language explaining how recipients can "opt-out" of receiving more faxes, but provided *retroactive immunity* for violators; a wholly unexpected and incongruous result from the perspective of Class Counsel.[9] The regulatory climate has been particularly hostile to consumers since the last election, with a major "business first" voice on the Commission—former Verizon general counsel Ajit Pai (who filed a dissent in the *2015 FCC Ruling*)—now serving as its Chairman.

Additionally, at least some courts view awards of aggregate, statutory damages with skepticism and reduce such awards—even after a plaintiff has prevailed on the merits—on due process grounds. *E.g., Aliano v. Joe Caputo & Sons - Algonquin, Inc.*,

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740 F.3d 1124, 1127 (7th Cir. 2014) ("Whether a call is 'dialer-generated' within the meaning of the TCPA is a hotly contested issue on the merits.").

[9] http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1030/FCC-14-164A1.pdf.

No. 09-910, 2011 WL 1706061, at *4 (N.D. Ill. May 5, 2011) ("[T]he Court cannot fathom how the minimum statutory damages award for willful FACTA violations in this case — between $100 and $1,000 per violation — would not violate Defendant's due process rights . . . . Such an award, although authorized by statute, would be shocking, grossly excessive, and punitive in nature."); *but see Phillips Randolph Enters., LLC v. Rice Fields*, No. 06-4968, 2007 WL 129052, at *3 (N.D. Ill. Jan. 11, 2007) ("Contrary to [defendant's] implicit position, the Due Process clause of the 5th Amendment does not impose upon Congress an obligation to make illegal behavior affordable, particularly for multiple violations.").

In fact, another court in this Circuit recently reduced per-call damages from $500 to $10 after a class-wide jury trial, finding $500 per call excessive. *Golan v. Veritas Entm't, LLC*, No. 14-69, 2017 WL 3923162, at *4 (E.D. Mo. Sept. 7, 2017). In comparison, if the Court were to approve this Settlement as requested, claimants are expected to receive more than $100. (Burke Decl. ¶ 20.)

Moreover, this Settlement provides the members of the Settlement Class with the opportunity to obviate *all* litigation risk, and allows them to recover substantial money with no need to prove their case in court.[10]

The Supreme Court's consideration of *Robins v. Spokeo, Inc.* and *Gomez v. Campbell-Ewald Co.* during the pendency of this action likewise posed considerable risk

[10] Although the Settlement does not provide for injunctive relief, Altisource has indicated that it no longer uses the challenged Aspect Dialer, Inc. equipment to make Cash for Relocation calls. Not coincidentally, Altisource's cessation of such calls happened during the pendency of this case. (Burke Decl. ¶ 20.)

that the Court might hold that statutory damage class actions violate Article III standing requirements, or that defendants can avoid class liability simply by "picking off" the named plaintiff with an individual settlement offer or Rule 68 offer of judgment. Though both of these opinions were ultimately decided in consumers' favor, Class Counsel assumed the risk at the outset of this litigation that Plaintiff might be "picked off" or simply have her claims extinguished based on a perceived lack of standing. *See Robins v. Spokeo, Inc.*, 742 F.3d 409, 411 (9th Cir. 2014), *cert. granted* (Apr. 27, 2015), *vacated and remanded*, 136 S. Ct. 1540 (2016); *Gomez v. Campbell-Ewald Co.*, 768 F.3d 871, 881 (9th Cir. 2014), *cert. granted* (May 18, 2015), *aff'd*, 136 S. Ct. 663 (2016).

Finally, there was a substantial risk of losing inherent in any trial. And even if Plaintiff prevailed at trial, Defendant would almost certainly appeal, threatening a reversal of any favorable outcome and causing significant delays in obtaining any relief for class members. Courts therefore have appropriately recognized the risk incurred by class counsel when they commit to contingent work, and the effect such a commitment can have on their ability to accept other work. *See, e.g., Yates v. Mobile Cnty. Pers. Bd.*, 719 F.2d 1530, 1534 (11th Cir. 1983) ("Vindication of the policy of the law depends to a significant degree on the willingness of highly skilled attorneys ... to accept employment ... on a wholly contingent basis. They will hardly be willing to do so if their potential compensation is limited to the hourly rate to which they would be entitled in noncontingent employment. Busy and successful attorneys simply could not afford to accept contingent employment if those were the rules that were applied.").

Losing this case outright was also a possibility; this happens all the time. *See, e.g.*,

(Burke Decl. ¶ 15); *Marshall*, 787 F.3d at 516 (affirming approval of class settlement over multiple objections—several of which argued that the settlement amount and structure were insufficient—noting that three class members who had excluded themselves from the class settlement *lost their individual cases* on summary judgment and received nothing); *Elkins v. Medco Health Solutions, Inc.*, No. 12-2141, 2014 WL 1663406, at *10 (E.D. Mo. Apr. 25, 2014) (granting defense summary judgment in TCPA class case); *Smith v. Securus Techs., Inc.*, No. 15-550, 2015 WL 4636696, at *10-12 (D. Minn. Aug. 4, 2015) (same). Thus, while Class Counsel were able to achieve an excellent result for Settlement Class Members, this outcome was far from certain when they agreed to the representation, and therefore, this factor weighs in favor of approving the requested fee. *See In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 994 ("The risks plaintiffs' counsel faced must be assessed as they existed in the morning of the action, not in light of the settlement ultimately achieved at the end of the day.").

3. Class Counsel exerted a great deal of time and effort in this case using their substantial experience in consumer and class action law, and were consequently precluded from accepting other employment.

The first, fourth, and seventh *Johnson* factors—the time and labor required, preclusion of other employment, and time limitations imposed on Class Counsel—as well as the third and ninth factors regarding counsel's skill and experience, further support the fee request.

Here, Class Counsel engaged in lengthy, contentious, and hard-fought litigation before reaching the Settlement. Over the course of more than two years—and without any

guarantee of payment—Class Counsel conducted a thorough pre-suit investigation, drafted pleadings and amended pleadings (ECF Nos. 1, 37, 42, 173, 189), pursued rigorous first and third-party discovery, survived a defense attempt to short-circuit liability through jurisdictional arguments (ECF Nos. 137, 144, 168, 172, 178), repeatedly moved to compel discovery based on issues not resolved through repeated and heated conferrals with defense counsel (ECF No. 99, 221), attended 21 discovery and other hearings (ECF Nos. 67, 124, 130, 143, 147, 169, 175, 179, 182, 187, 192, 194, 220, 226, 230, 235, 253, 260-262, 270), deposed a Rule 30(b)(6) witness for the "Altisource" family of companies and an Electronically Stored Information witness, participated in numerous, arms' length negotiations—including a full-day, in-person mediation—and thereafter continued to finalize the Settlement and associated papers presented to the Court, among other things. (Burke Decl. ¶ 17.)

Class Counsel are experienced in consumer and class action litigation, including under the TCPA. (Burke Decl. ¶¶ 2-14; Heaney Decl. ¶¶ 2-5.) Burke Law Offices, LLC in particular has been involved in many major pieces of TCPA litigation involving banks, debt collectors, and others within the financial services industry, and its work has helped recover well over $230 million in non-reversionary cash for class members. (Burke Decl. ¶¶ 2, 6-7.) Its experience has been recognized by other courts: In addition to being appointed interim liaison class counsel in *Smith v. State Farm Mut. Auto. Ins. Co.*, No. 13-2018 (N.D. Ill.), and interim co-lead class counsel in the case of *Lowe v. CVS Pharmacy, Inc.*, No. 14-3687 (N.D. Ill.), Burke Law Offices, LLC was appointed additional class counsel in the *In re Capital One TCPA Litigation* MDL, in which the

court granted final approval to a $75.5 million class settlement – the largest in the history of the TCPA. *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781 (N.D. Ill. 2015). The firm was also appointed co-class counsel with respect to the $40 million settlement in *Wilkins v. HSBC Bank Nev., N.A.* – the third largest TCPA settlement in history. No. 14-190, 2015 WL 890566 (N.D. Ill. Feb. 27, 2015) (DE 59), and was co-lead counsel in a series of TCPA cases against Wells Fargo, ultimately obtaining approximately $60,000,000 in recovery over the past three years. *Markos v. Wells Fargo*, No. 14-1156 (N.D. Ga.) (mortgage-related calls); *Cross v. Wells Fargo*, No. 15-1270 (N.D. Ga) (deposit account calls); *Prather v. Wells Fargo*, No. 16-4231 (N.D. Ga.) (student loan calls); *Luster v. Wells Fargo Dealer Services, LLC*, No. 15-1058 (N.D. Ga.) (automobile loan calls). The firm's principal, Alexander H. Burke, is regularly asked to speak on TCPA issues, is actively engaged in policymaking related to the TCPA, and has vast experience in successfully litigating TCPA class actions. (Burke Decl. ¶¶ 3, 6.) Class Counsel's experience thus strongly supports the requested fee; indeed, their skill and familiarity with analyzing complex data from multiple sources in the context of TCPA litigation was instrumental in permitting informed, effective negotiations that ultimately led to the Settlement now before the Court. (Burke Decl. ¶ 17.)

Moreover, because Class Counsel prosecuted this action on a contingent-fee basis, they had a strong incentive to, and did, work efficiently and without unnecessary expense. *See Krueger v. Ameriprise Fin., Inc.*, No. 11-02781, 2015 WL 4246879, at *3 (D. Minn. July 13, 2015) ("Given that Class Counsel represented Plaintiffs on a contingent-fee basis, they had a strong incentive to keep these expenses at a reasonable

level.") (Nelson, J.).

This expenditure of time and resources has affected Class Counsel's ability to accept other work. *See, e.g., Yates*, 719 F.2d at 1535 ("The expenditure of 1,000 billable hours—and often in significant blocks of time—necessarily had some adverse impact upon the ability of counsel for plaintiff to accept other work, and this factor should raise the amount of the award."); *see also Stalcup v. Schlage Lock Co.*, 505 F. Supp. 2d 704, 708 (D. Colo. 2007) (noting that "priority work that delays a lawyer's other work is entitled to a premium"). Accordingly, Class Counsel's experience and resources devoted to this case supports the reasonableness of the requested fee award.

4. The requested fee is consistent with those awarded in other similarly complex class settlements.

The fifth and twelfth *Johnson* factors—the customary fee and awards in similar cases—likewise supports Class Counsel's fee request. Courts, including in the Eighth Circuit, have recognized the appropriateness of relying on analogous class action settlements to determine the reasonableness of attorneys' fees. *See, e.g., Yarrington*, 697 F. Supp. 2d at 1062 (identifying "the comparison between the requested attorney fee percentage and percentages awarded in similar cases" as a factor in determining appropriate fee amount); *accord In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 993.

Here, the requested fee of one-third of the total Settlement Fund is on par with attorneys' fees consistently awarded in similar TCPA class litigation. *See, e.g., Schwyhart v. AmSher Collection Servs., Inc.*, No. 15-1175, 2017 WL 1034201, at *3 (N.D. Ala. Mar. 16, 2017) (awarding one-third fees in TCPA class settlement); *Lees v.*

Anthem Ins. Cos., No. 13-1411, 2015 WL 3645208, at *4 (E.D. Mo. June 10, 2015) (awarding fees of 34% of defendant's payout); *Martin v. JTH Tax, Inc.*, No. 13-6923 (N.D. Ill. Sept. 23, 2015) (ECF No. 86) (awarding one-third of common fund); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third fees and costs); *Martin v. Dun & Bradstreet, Inc.*, No. 12-00215 (N.D. Ill. Jan. 16, 2014) (ECF No. 66) (awarding one-third fee payment of distributed fund); *Cummings v Sallie Mae*, No. 12-9984 (N.D. Ill. May 30, 2014) (ECF No. 91) (awarding one-third of the common fund for fees); *Hanley v. Fifth Third Bank*, No. 12-01612 (N.D. Ill. Dec. 23, 2013) (ECF No. 86) (awarding one-third of common fund); *Desai v. ADT Sec. Servs., Inc.*, No. 11-01925 (N.D. Ill. June 21, 2013) (ECF No. 243) (approving payment of one-third of common fund); *Paldo Sign & Display Co. v. Topsail Sportswear, Inc.*, No. 08-05959 (N.D. Ill. Dec. 21, 2011 (ECF No. 116) (approving one-third of the settlement fund plus expenses); *CE Design Ltd. v. Cy's Crab House N., Inc.*, No. 07-05456 (N.D. Ill. Oct. 27, 2011) (ECF No. 424) (same); *Saf-T-Gard Int'l, Inc., v. Seiko Corp. of Am.*, No. 09-00776 (N.D. Ill. Jan. 14, 2011) (ECF No. 100) (same); *G.M. Sign, Inc. v. Finish Thompson, Inc.*, No. 07-05953 (N.D. Ill. Nov. 1, 2010) (ECF No. 146) (same); *Hinman v. M & M Rental Ctr., Inc.*, No. 06-01156 (N.D. Ill. Oct. 6, 2009) (ECF No. 225) (same); *Holtzman v. CCH*, No. 07-07033 (N.D. Ill. Sept. 30, 2009) (ECF No. 33) (same); *CE Design, Ltd. v. Exterior Sys., Inc.*, No. 07-00066 (N.D. Ill. Dec. 6, 2007) (ECF No. 39) (same). *Locklear Elec., Inc. v. Norma L. Lay*, No. 09-00531 (S.D. Ill. Sept. 8, 2010) (awarding 33% of the common fund plus costs); *Accounting Outsourcing, LLC v Verizon Wireless*, No. 03-161, 2007 WL 7087615, at *2 (M.D. La. Aug. 2, 2007)

(awarding 36.5% of the $6,340,625 common fund plus costs).

Class Counsel's one-third fee request is also on par with amounts consistently awarded in other common fund, non-TCPA cases in this Circuit, as well. "Indeed, courts have frequently awarded attorneys' fees ranging *up to 36%* in class actions." *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (finding district court's one-third fee award in class settlement to be "in line with other awards in the Eighth Circuit") (emphasis added); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) ("[W]e find no abuse of discretion in the district court's awarding 36% to class counsel who obtained significant monetary relief on behalf of the class."); *Barfield v. Sho-Me Power Elec. Co-op*, No. 11-4321, 2015 WL 3460346, at *4 (W.D. Mo. June 1, 2015) ("At one-third of the value of the ... Settlement as a whole, the fee-and-expense award falls within the range of percentage-fee awards found reasonable in the Eighth Circuit.") (citing cases); *Krueger*, 2015 WL 4246879, at *4 (this Court awarding one-third of fund in fees to class counsel).

Given these factors, Class Counsel's fee request is fully consistent with the market for legal fees, and should, respectfully, be granted.

C. A Lodestar Cross-Check Further Supports the Requested Fee Award.

Class Counsel's fee request is supported by a lodestar cross-check, adding further reason for this motion to be granted.

Although not required, the Eighth Circuit has approved the use of the lodestar method—attorney time multiplied by reasonable hourly rate, adjusted as appropriate to reflect the individualized characteristics of the action—to "double-check" the appropriateness of fees under the percentage-of-the-fund approach. *Petrovic v. Amoco Oil*

Co., 200 F.3d 1140, 1157 (8th Cir. 1999). "The lodestar cross-check need entail neither mathematical precision nor bean counting but instead is determined by considering the unique circumstances of each case." *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 999 (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 303 (3d Cir. 2005)). "[It] need not fall within any pre-defined range, so long as the court's analysis justifies the award, such as when the multiplier is in line with multipliers used in other cases." *Id.*

In prosecuting this action over the past two-and-a-half years, Burke Law Offices, LLC has expended a total of 791.95 attorney hours, and Heaney Law Firm, LLC has expended a total of 75.3 attorney hours, resulting in a lodestar of $376,032.50 for Burke Law Offices, LLC and $37,650.00 for Heaney Law Firm, LLC—for a total lodestar of $413,682.50. (Burke Decl. ¶ 12; Heaney Decl. ¶¶ 9-10.) Class Counsel's lodestar—requiring a minimal risk multiplier of approximately 1.45 to reach the requested amount of one-third of the Settlement Fund—thus strongly supports the fee award sought. *See, e.g., Keil*, 862 F.3d at 701 (rejecting class action settlement objector argument that lodestar multiplier of 2.7 was excessive); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 999 (finding lodestar cross-check multiplier of 4.7 reasonable).

D. The Proposed Class Representative Award Is Reasonable.

Incentive awards compensate named plaintiffs for work done on behalf of the class by attempting to account for financial, personal, or reputational risks associated with litigation and promote public policy goals by encouraging plaintiffs to step forward on behalf of unnamed class members. *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 333 n. 65 (3d Cir. 2011) ("The purpose of these payments is to compensate named

plaintiffs for the services they provided and the risks they incurred during the course of class action litigation, and to reward the public service of contributing to the enforcement of mandatory laws.") (citations omitted). The requested incentive award of $15,000 here is well justified, supported by case law in this District and, along with Class Counsel's fee request, has been plainly disclosed in the class notice. ECF. No. 266-1, Ex. C.

Plaintiff Beecroft's active involvement in aiding Class Counsel in prosecuting this action over the past two-and-a-half years warrants the requested incentive award. In addition to serving as Class Representative she, among other things, (1) provided information to Class Counsel for the complaint and other filings; (2) repeatedly conferred with Class Counsel to discuss the progress of litigation; (3) reviewed pleadings and other documents; (3) aided Class Counsel in conducting discovery; and (4) stayed apprised of settlement negotiations, and ultimately approved the Settlement now before the Court. (Burke Decl. ¶ 19.)

The incentive award requested here, $15,000, is commensurate with incentive awards approved by other federal courts. *See, e.g.*, *Krueger*, 2015 WL 4246879, at *4 (this Court approving incentive awards of $25,000 each to five named plaintiffs); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (upholding award of $25,000 to class representative); *Ikuseghan v. Multicare Health Sys.*, No. 14-5539, 2016 WL 4363198, at *3 (W.D. Wash. Aug. 16, 2016) (awarding $15,000 incentive award in TCPA class action); *Prater v. Medicredit, Inc.*, No. 14-159, 2015 WL 8331602, at *3 (E.D. Mo. Dec. 7, 2015) (approving $20,000 incentive award in TCPA class settlement); *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07-2898, 2012 WL 651727, at *16-17 (N.D. Ill. Feb.

28, 2012) ($25,000 incentive award is reasonable); *Benzion v. Vivint, Inc.*, No. 12-61826 (S.D. Fla. Feb. 23, 2015) (ECF No. 201) (approving $20,000 incentive award in TCPA action); *Martin v. Dun & Bradstreet, Inc.*, No. 12-00215 (N.D. Ill. Jan. 16, 2014) (ECF No. 66) (awarding $20,000 incentive award in TCPA action); *Hanley v. Fifth Third Bank*, No. 12-01612 (N.D. Ill. Dec. 23, 2013) (ECF No. 86) (awarding $25,000 incentive award in TCPA action); *Desai v. ADT Sec. Servs., Inc.*, No. 11-01925 (N.D. Ill. June 21, 2013) (ECF No. 243) (approving incentive awards of $30,000 each to two named plaintiffs in TCPA action); *CE Design Ltd. v. Cy's Crab House N., Inc.*, No. 07-05456 (N.D. Ill. Oct. 27, 2011) (ECF No. 424) ($25,000 incentive award in TCPA action).

Given Tracee Beecroft's longstanding prosecution of this matter for over two-and-a-half years, and the reasonableness of the requested award in light of amounts awarded in other TCPA class action, the Court should, respectfully, approve an incentive award of $15,000 for her service on behalf of the Class.

IV. CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Court grant this motion and award Class Counsel attorneys' fees in the amount of $600,000, or one-third of the Settlement Fund, plus costs of $26,362.67. Class Counsel further request that the Court approve a service award of $15,000 to the Class Representative, Plaintiff Tracee A. Beecroft.

Respectfully submitted,

TRACEE A. BEECROFT

Dated: December 14, 2017

By: */s/ Mark L. Heaney*

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Defendant's following counsel of record:

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TRACEE A. BEECROFT, on behalf of herself and all others similarly situated, Plaintiff, v. ALTISOURCE BUSINESS SOLUTIONS PVT. LTD., Defendant.	Case No. 0:15-cv-02184-SRN-BRT

LR 7.1(f) CERTIFICATE OF COMPLIANCE

I, Mark L. Heaney, certify that the memorandum titled "**Memorandum In Support of Plaintiff's Motion for Attorneys' Fees and Service Award**" complies with Local Rule 7.1(f).

I further certify that, in preparation of the above document, I used Microsoft Word 2008 and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

I further certify that the above document contains 7,597 words, excluding the cover page, tables of contents and authorities, and signature page.

HEANEY LAW FIRM, LLC

Date: **December 14, 2017**

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

TRACEE A. BEECROFT, on behalf of herself and all others similarly situated, Plaintiff, v. ALTISOURCE BUSINESS SOLUTIONS PVT. LTD., Defendant.	Case No. 0:15-cv-02184-SRN-BRT

DECLARATION OF ALEXANDER H. BURKE

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

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

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

the Fair Labor Standards Act, among others. The firm also sometimes accepts mortgage foreclosure defense or credit card defense case. Except for debt collection defense cases, the firm works almost exclusively on a contingency basis. The firm's work has helped recover well over $230 million in non-reversionary cash for consumer class members.

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

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

5. I make substantial efforts to remain current on the law, including class action issues. I attended the National Consumer Law Center's Consumer Rights Litigation Conference in 2006 through 2017, and was an active participant in the Consumer Class Action Intensive Symposium between 2006 and 2013. In October 2009, I spoke on a panel of consumer class action attorneys welcoming newcomers to the conference. In addition to regularly attending Chicago Bar Association meetings and

events, I was the vice-chair of the Chicago Bar Association's consumer protection section in 2009 and the chair in 2010. In November 2009, I moderated a panel of judges and attorneys discussing recent events and decisions concerning arbitration of consumer claims and class action bans in consumer contracts.

6. Some notable autodialer TCPA class actions and other cases that my firm has worked on include: *Luster v. Wells Fargo Dealer Svcs.*, 1:15-cv-1058-TWT (N.D.Ga. Nov. 8, 2017) ($14.8M TCPA settlement finally approved; I served as co-lead counsel); *Ahmed v. HSBC Bank USA, Nat'l Ass'n*, No. EDCV152057FMOSPX, 2017 WL 4325587 (C.D. Cal. Sept. 25, 2017) (compelling class discovery in TCPA case); *Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2017 WL 2798387, at *1 (N.D. Ill. June 28, 2017) (certifying Fed.R.Civ.P. 23(b)(2) litigation class for injunctive relief in TCPA case); *Fulton Dental, LLC v. Bisco, Inc.*, 860 F.3d 541 (7th Cir. 2017) (rejecting notion that a Fed.R.Civ.P. 67 tender of funds to the Court can "moot" a TCPA class action); *Meredith v. United Collection Bureau, Inc.*, 319 F.R.D. 240, 241 (N.D. Ohio 2017) (ordering TCPA class call data produced); *Hurst v. Monitronics Int'l, Inc.*, No. 1:15-CV-1844-TWT, 2016 WL 523385 (N.D. Ga. Feb. 10, 2016) (motion to compel arbitration denied in TCPA class case), *aff'd*, --- Fed. Appx. ---- 2017 WL 957188 (11th Cir. Mar. 13, 2017); *Cross v. Wells Fargo, N.A.*, No. 1:15-cv-1270, Docket Entry 103 (Feb. 10, 2017 N.D.Ga.) (final approval granted for $30M class settlement where I was lead counsel); *Lowe v. CVS Pharmacy, Inc.*, No. 14 C 3687, 2017 WL 528379 (N.D. Ill. Feb. 9, 2017) (personal jurisdiction motion denied in large TCPA case); *Markos v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-1156-LMM, 2017 WL 416425 (Jan. 30, 2017, N.D. Ga.) (final

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

interim liaison counsel pursuant to contested motion in large TCPA class case), 2014 WL 3906923 (Aug 11, 2014) (motion to dismiss denied in cutting edge vicarious liability case); *Markovic v. Appriss, Inc*., 2013 WL 6887972 (S.D. Ind. Dec. 31, 2013) (motion to dismiss denied in TCPA class case); *Martin v. Comcast Corp.*, 2013 WL 6229934 (N.D. Ill. Nov. 26, 2013) (motion to dismiss denied in TCPA class case); *Gold v. YouMail, Inc*., 2013 WL 652549 (S.D. Ind. Feb. 21, 2013) (contested motion for leave to amend granted to permit cutting-edge vicarious liability theory allegations); *Martin v. Dun & Bradstreet, Inc.*, No. 1:12-cv-215 (N.D. Ill. Aug. 21, 2012) (certifying litigation class and appointing me as sole class counsel) (final approval granted for $7.5 million class settlement granted January 16, 2014); *Desai v. ADT, Inc.*, No. 1:11-cv-1925 (N.D. Ill. June 21, 2013) (final approval for $15 million TCPA class settlement granted); *Martin v. CCH, Inc*., No. 1:10-cv-3494 (N.D. Ill. Mar. 20, 2013) (final approval granted for $2 million class settlement in TCPA autodialer case); *Swope v. Credit Mgmt., LP*, 2013 WL 607830 (E.D. Mo. Feb. 19, 2013) (denying motion to dismiss in "wrong number" TCPA case); *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838 (N.D. Ill. Aug. 10, 2012) (denying motion to dismiss TCPA case on constitutional grounds); *Soppet v. Enhanced Recovery Co*., 2011 WL 3704681(N.D. Ill. Aug 21, 2011), *aff'd*, 679 F.3d 637 (7th Cir. 2012) (TCPA defendant's summary judgment motion denied. My participation was limited to litigation in the lower court); *D.G. ex rel. Tang v. William W. Siegel & Assocs., Attorneys at Law, LLC*, 2011 WL 2356390 (N.D. Ill. Jun 14, 2011); *Martin v. Bureau of Collection Recovery*, 2011WL2311869 (N.D. Ill. June 13, 2011) (motion to compel TCPA class discovery granted); *Powell v. West Asset Mgmt., Inc.*, 773 F. Supp. 2d 898 (N.D. Ill.

2011) (debt collector TCPA defendant's "failure to mitigate" defense stricken for failure to state a defense upon which relief may be granted); *Fike v. The Bureaus, Inc.*, 09-cv-2558 (N.D. Ill. Dec. 3, 2010) (final approval granted for $800,000 TCPA settlement in autodialer case against debt collection agency); *Donnelly v. NCO Fin. Sys., Inc.*, 263 F.R.D. 500 (N.D. Ill. Dec. 16, 2009) (Fed. R. Civ. P. 72 objections overruled in toto), 2010 WL 308975 (N.D. Ill. Jan 13, 2010) (novel class action and TCPA discovery issues decided favorably to class).

7. Before I opened Burke Law Offices, LLC, I worked at two different plaintiff boutique law firms doing mostly class action work, almost exclusively for consumers. Some decisions that I was actively involved in obtaining while at those law firms include: *Cicilline v. Jewel Food Stores, Inc.*, 542 F. Supp. 2d 831 (N.D. Ill. 2008) (FCRA class certification granted); 542 F. Supp. 2d 842 (N.D. Ill. 2008) (plaintiffs' motion for judgment on pleadings granted); *Harris v. Best Buy Co.*, No. 07 C 2559, 2008 U.S. Dist. LEXIS 22166 (N.D. Ill. Mar. 20, 2008) (Class certification granted); *Matthews v. United Retail, Inc.*, 248 F.R.D. 210 (N.D. Ill. 2008) (FCRA class certification granted); *Redmon v. Uncle Julio's, Inc.*, 249 F.R.D. 290 (N.D. Ill. 2008) (FCRA class certification granted); *Harris v. Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596, 2008 WL 400862 (N.D. Ill. Feb. 7, 2008) (FCRA class certification granted); *aff'd upon objection* (Mar. 28, 2008); *Harris v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. Oct. 10, 2007) (motion to dismiss in putative class action denied); *Barnes v. FleetBoston Fin. Corp., C.A.* No. 01-10395-NG, 2006 U.S. Dist. LEXIS 71072 (D. Mass. Aug. 22, 2006) (appeal bond required for potentially frivolous objection to large class action

settlement, and resulting in a $12.5 million settlement for Massachusetts consumers); *Longo v. Law Offices of Gerald E. Moore & Assocs., P.C.*, No. 04 C 5759, 2006 U.S. Dist. LEXIS 19624 (N.D. Ill. March 30, 2006) (class certification granted); *Nichols v. Northland Groups, Inc*., Nos. 05 C 2701, 05 C 5523, 06 C 43, 2006 U.S. Dist. LEXIS 15037 (N.D. Ill. March 31, 2006) (class certification granted for concurrent classes against same defendant for ongoing violations); *Lucas v. GC Services, L.P*., No. 2:03 cv 498, 226 F.R.D. 328 (N.D. Ind. 2004) (compelling discovery), 226 F.R.D. 337 (N.D. Ind. 2005) (granting class certification); *Murry v. America's Mortg. Banc, Inc.*, Nos. 03 C 5811, 03 C 6186, 2005 WL 1323364 (N.D. Ill. May 5, 2006) (Report and Recommendation granting class certification), *aff'd*, 2006 WL 1647531 (June 5, 2006); *Rawson v. Credigy Receivables, Inc*., No. 05 C 6032, 2006 U.S. Dist. LEXIS 6450 (N.D. Ill. Feb. 16, 2006) (denying motion to dismiss in class case against debt collector for suing on time-barred debts).

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

9. I was the Feature Articles Editor of the Loyola Consumer Law Review and Executive Editor of the International Law Forum. My published work includes

International Harvesting on the Internet: A Consumer's Perspective on 2001 Proposed Legislation Restricting the Use of Cookies and Information Sharing, 14 Loy. Consumer L. Rev. 125 (2002).

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

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

12. My firm's records indicate that I spent 494.25 hours, and Daniel J. Marovitch spent 297.70 hours, prosecuting this case, for a total lodestar of $376,032.50. My firm also spent $23,593.48 in out-of-pocket costs for the class's benefit. Costs included the costs associated with service of subpoenas and process (including foreign service), deposition transcripts, travel for hearings and Altisource's Rule 30(b)(6) deposition, and mediation.

13. To the extent that the Court finds a lodestar analysis or cross-check is appropriate, the following is a list of some matters in which certain hourly rates were

considered or adopted:

a. In *Smith v. State Farm Mutual Auto. Ins. Co.*, No. 13-2018 (N.D. Ill.), I submitted my lodestar at a rate of $550 an hour in support of class counsel's request for a fee award amounting to one-third of the fund less notice and administration costs. The court granted class counsel's full fee request.

b. In *Rose v. Bank of America*, No. 11-2390, 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014), I submitted my time records and requested an hourly rate of $575. The Court approved all rates requested by all counsel as generally reasonable, although the opinion does not specifically mention me. See *Id*. at *8.

c. In *O'Hagan v. Blue Ribbon Taxi Association, Inc*., No. 1:11-cv-5269 (N.D. Ill. Sept. 20, 2013), final approval of a Fair Credit Reporting Act class action settlement was granted. Although fees were capped as part of the settlement, Magistrate Judge Rowland considered and approved all aspects of the settlement. My fee petition in that case requested an hourly rate of $550 per hour.

d. In *Ahmed v. Oxford Collection Services, Inc*., No. 1:11-cv-1938 (N.D. Ill. April 19, 2011), Judge Rebecca Pallmeyer of the Northern District of Illinois entered a judgment against the defendant including attorney's fees for my work at a rate of $340 per hour in an individual TCPA case where the defendant reneged on a settlement agreement.

e. In *Fike v. The Bureaus, Inc.*, No. 1:20-cv-2558 (N.D. Ill. Dec. 3, 2010), Judge Robert M. Dow, Jr. approved a common fund attorney's fee award based at least in part upon counsel's lodestar, which was calculated at $340 per hour. When I worked as an associate at another firm, in *Catalan v. RBC Mortg. Co*., 2009 WL 2986122 (N.D. Ill. Sept. 16, 2009), Judge Robert M. Dow, Jr. approved my hourly rate at $285 per hour while I was an associate arising out of a contested fee petition. Although the total fee award was reduced, hourly rates were not reduced.

f. I was also an associate at another firm when Magistrate Judge Jeffrey Cole approved my hourly rate at $288 in *Pacer v. Rockenbach Chevrolet*, 1:07-cv-5173 (N.D. Ill January 15, 2009).

In this case, I request $550 per hour.

14. The firm seeks $350 per hour for Mr. Marovitch's work on the case. This $350 per hour is justified because of Mr. Marovitch's experience in litigating TCPA actions. Among other cases, he was appointed class counsel in the $6 million TCPA class settlement in *Benzion v. Vivint, Inc.*, No. 12-61826 (S.D. Fla. final approval Feb. 23, 2015), in which he submitted a fee request based on a rate of $310 an hour, though the Court ultimately approved fees on a percentage-of-the-fund basis. He was also appointed class counsel in the $2.75 million TCPA class settlement in *Jonsson v. USCB, Inc.*, No. 13-8166 (C.D. Cal. final approval May 28, 2015), in which he again submitted a fee request based on a rate of $310 an hour, with the Court likewise ultimately approved fees on a percentage-of-the-fund basis. In the $7 million TCPA class settlement in *Smith v.*

State Farm Mutual Auto. Ins. Co., No. 13-2018 (N.D. Ill. final approval Dec. 8, 2016), Mr. Marovitch submitted a fee request based on a rate of $340 an hour, although, again, the Court ultimately approved fees on a percentage-of-the-fund basis. While these courts' orders approving settlement did not address these rates directly, they did not find it to be unreasonable. Likewise, Mr. Marovitch's billable rate is reasonably consistent with (and, indeed, below) the $429 average hourly rate for a 6-10 year practicing consumer law attorney in Chicago, according to Ronald L. Burdge, United States Consumer Law Attorney Fee Survey Report, at 224 (2015-2016).

15. When Burke Law Offices, LLC loses cases, my firm takes in no money whatsoever, regardless of how hard I worked and regardless of how much money I spent on depositions, experts and other out-of-pocket costs. This happens. For example, I lost *Greene v. DirecTV, Inc.*, No. 10-117, 2010 WL 4628734 (N.D. Ill. 2010), *Elkins v. Medco Health Solutions, Inc.*, No. 12-2141, 2014 WL 1663406 (E.D. Mo. Apr. 25, 2014), and *Fitzhenry v. ADT*, 2014 WL 6663379 (S.D. Fla. Nov. 3, 2014), each hard-fought litigations that I took on a contingency basis. My firm put substantial time and money into both; resources that could have been allocated to other cases. I believed that the plaintiff/class would prevail in these cases when I accepted them for representation, but in the end I was incorrect. As with other lawyers, sometimes I think I should have won cases or motions that I eventually lose. The difference is that while most lawyers (including my adversaries) receive remuneration regardless of whether they win or lose, I do not. These are not the only cases I have lost, but they illustrate the risks associated with this kind of contingency practice.

16. The contracts I draft and negotiate with my clients call for the client to pay, on a contingency basis, 40% of the total amount of any judgment or settlement after costs had been deducted. When the firm began taking TCPA cases, its agreement with clients called for fees in the amount of one-third after expenses. However, because I had focused on TCPA cases for quite some time and believed the market would bear such, in around 2011, I raised my contingency fee to 40%, after expenses. I have not had any potential clients balk a 40% fee—indeed, even former clients who returned with new potential cases agreed to this fee arrangement; ostensibly because they believed I deserved such a fee because of my representation and results. Based upon conversations with other TCPA lawyers in Chicago and around the country, I am confident that the market rate for plaintiff contingency representation for this kind of case is between one-third and 40%. Indeed, the contract with Ms. Beecroft in this case calls for fees of 40% of her recovery.

17. Burke Law Offices, LLC put in considerable efforts in prosecuting this action. We, with co-counsel, thoroughly investigated Plaintiff's claims, both before suit and throughout these proceedings. Our discovery efforts—which included issuing multiple sets of discovery requests to Altisource and its related companies on jurisdictional, merits, and class issues, the Rule 30(b)(6) deposition of the "Altisource" jurisdictional deponent, the issuance of relevant FOIA requests to government agencies, and third-party subpoenas to Plaintiff's carrier and Defendant's dialer provider—yielded the production by Altisource and others of tens of thousands of pages of documents and millions of rows of data relevant to Plaintiff's claims. At times this case was contentious, and we participated in numerous hearings, defended against defense motions, and filed

our own motions to compel and for protective order as we believed necessary to successfully prosecute this action, overcoming key obstacles thrown at us by Altisource—from a jurisdictional game of whack-a-mole proffered by various Altisource-related entities, to delay and non-production of responsive discovery needed to effectively litigate the case. After we obtained necessary discovery regarding the nature and extent of the class, we engaged with defense counsel in rigorous, arm's-length negotiations concerning the possible settlement of this action over the course of many months, including, by participating in a mediation before the Honorable Morton Denlow (ret.) of JAMS on August 17, 2017. In preparation for the mediation, the parties submitted detailed confidential mediation briefs to Judge Denlow setting forth their respective views as to the strengths of their cases. And even after the parties reached an agreement in principle at the end of the all-day mediation, we continued to negotiate the details of the Settlement via email and telephone, ultimately coming to the Settlement now before the Court. I believe that the extensive discovery and other efforts by my firm and co-counsel, in addition to our skill and familiarity with TCPA class litigation and associated complex data analysis, were instrumental in permitting informed, effective negotiations that ultimately led to this terrific Settlement for the Class.

18. Success was by no means guaranteed in this case, however. My co-counsel and I assumed considerable risk of nonpayment by advancing all costs and prosecuting this action on an entirely contingent fee basis for over two-and-a-half years. For example, Altisource contends that it obtained the phone numbers it called through a variety of disparate ways, including not only through third-party skip tracing, but in relation to its

role as the servicer for the bank or other owner of property after foreclosure. Likewise, the data Altisource produced did indicate that there was an (albeit small) portion of call recipients for whom Altisource may have been called or otherwise received the phone number from the consumer directly *before* itself calling the number. Defendant's attorneys have indicated on multiple occasions that individualized consent issues resulting from the various methods by which Defendant obtained the phone numbers it called constitutes a significant class certification defense, and my co-counsel and I could not discount the possibility that an opposition to class certification would have been successful. Altisource has also claimed that the calls at issue were "manually" dialed, raising the issue of whether the calls were made using an "automatic telephone dialing system" under the TCPA. And this doesn't even account for the risk inherent in a jury trial or that, even if successful, Defendant would likely appeal or the Court might ultimately reduce any jury award—or even the fact that the TCPA has been under constant attack by industry groups intent on limiting its consumer protections by, for example, petitioning for appellate review of FCC pro-consumer rulings, among other things. My co-counsel and I took on considerable risk in zealously advocating on behalf of Plaintiff and the class for the past two-and-a-half years, and I respectfully believe that the requested fee of one-third of the Settlement Fund is reasonable and appropriate.

19. Plaintiff Tracee Beecroft exerted considerable effort in this case on behalf of the class. In addition to serving as Class Representative she, among other things, (1) provided information to Class Counsel for the complaint and other filings; (2) repeatedly conferred with Class Counsel to discuss the progress of litigation; (3) reviewed pleadings

and other documents; (3) aided Class Counsel in conducting discovery; and (4) stayed apprised of settlement negotiations, and ultimately approved the Settlement now before the Court. This Settlement would not have been possible without Ms. Beecroft's efforts on behalf of the class.

20. If the Settlement were to be approved as requested, I estimate, based on a claims rate of around 5%, that Class Members who submit a claim form will receive at least $100 each. In addition to this material monetary benefit, although the Settlement does not provide for injunctive relief, Altisource has indicated that, since the pendency of this action, it no longer uses the challenged Aspect Dialer, Inc. equipment to make Cash for Relocation calls.

21. Though the deadline to do so is December 29, 2017, to date, no Class Member has objected to the Settlement.

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

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 14, 2017, in Evanston, Illinois.

/s/ Alexander H. Burke

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TRACEE A. BEECROFT, on behalf of himself and others similarly situated, Plaintiff, v. ALTISOURCE BUSINESS SOLUTIONS PVT. LTD., Defendant.	Case No. 15-cv-02184 (SRN/BRT)

DECLARATION OF MARK L. HEANEY IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND SERVICE AWARD

I, Mark L. Heaney, declare as follows:

1. I am Mark L. Heaney, owner of Heaney Law Firm, LLC. I am co-counsel of record for Plaintiff Tracee A. Beecroft. I submit this declaration in support of Plaintiff Tracee A. Beecroft's motion for attorneys' fees and service award. Except as otherwise noted, I have personal knowledge of the facts set forth in this Declaration, and could testify competently if called upon to do so.

2. My law practice is dedicated to representing plaintiffs in cases involving violations of both state and federal consumer protection laws. I have been practicing exclusively in the area of consumer law for over twelve years. I have successfully represented individuals in cases involving the Telephone Consumer Protection Act, Fair Debt Collection Practices Act, and Fair Credit Reporting Act, among others, before this Court and in state court.

3. Heaney Law Firm is litigating or has recently settled the following class actions:

- *Hashw, Ameer v. Department Stores National Bank, et al.*, Case No. 0: 13-cv-00727-RHK-BRT (D. Minn.), filed on behalf consumers who received automated collection telephone calls on their cellular telephones without their prior express consent within the meaning of the TCPA. Final approval of the $12.5 million settlement was granted in April 2016.

- *Keith Snyder v. Ocwen Loan Servicing, LLC*, Case No. 1:14-cv-08461 (N.D. Ill.) filed on behalf of consumers who received automated collection calls on their cellular telephones without their prior express consent within the meaning of the TCPA. The Court recently granted preliminary approval of class action settlement of $17,500,000 before for the Court.

- *Scott Riley, et al. v. Money Mutual, LLC*, Case No. 0:16-cv-04001-DWF-LIB (D. Minn.), and Case No. 19HA-CV-14-858 (Dakota County District Court, State of Minnesota), filed on behalf of Minnesota consumers who received unlawful, payday loans arranged by Money Mutual in violation of Minnesota's payday lending statutes.

4. I became licensed to practice law in the State of Arizona in 2003 and the State of Minnesota in 2003, and am a member of the bar of the United States Court of Appeals for the Eighth Circuit, as well as the District of Minnesota and the Western District of Wisconsin.

5. I graduated from the University of St. Thomas in 2000 (B.A. Psychology), and Pepperdine University School of Law in 2003 (J.D.). I am a member of the Minnesota State Bar Association, State Bar of Arizona and National Association of Consumer Advocates. I regularly attend annual conferences conducted by the National Consumer Law Center and the National Association of Consumer Advocates in order to keep up-to-date on consumer protection litigation and case law.

6. My law office, along with Burke Law Office, LLC, accepted this case for

Tracee A. Beecroft, and the class, on a contingency fee basis, which means that the attorneys receive no compensation without a favorable settlement or judgment for the plaintiffs. The costs of litigating this case have been paid and advanced by Mr. Burke's and my law offices without any guarantee of reimbursement. I have spent a substantial amount of time and resources in this case that would have otherwise been spent on other matters and revenue generating business. My law office is a solo law practice. There are no other persons to bear the risk of contingency fee work and I, along with my co-counsel, am responsible for all the legal work. Mr. Burke and I shouldered substantial risks and costs in pursuing this case for over almost three years and ultimately obtained an outstanding result for the Class Members.

7. This action has been litigated vigorously on behalf of the Class for over two years. There has been extensive written discovery, subpoenas, numerous motions, and we reviewed thousands of pages of evidence, in addition to conducting extensive legal research and analysis regarding all the relevant legal claims of the Class and the Defendants. The settlement was negotiated in a full-day mediation before the Honorable Morton Denlow (Ret.) of JAMS.

8. The settlement reach in this case is an excellent outcome for the class members. Counsel expects that each claiming class member will receive at least $100. If class members had filed TCPA cases on their own, and prevailed, they would have been able to recover a minimum of $500 per statutory violations. However, the cost of filing an individual case and pursing the case through extensive litigation necessary to prevail would have made the pursuit of an individual case futile. As a result of the present

settlement, Class Members will receive monetary compensation without any work or expense at all.

9. Alexander H. Burke of Burke Law Office, and I worked very hard for almost three years to obtain an excellent outcome in this case. I have reviewed my time records of time spent on this case. Those records reveal that I spent 75.3 hours of time on this case. I was active in the initial, pre-filing investigation of this case, drafting pleadings, motion practice, discovery matters, reviewing discovery and pushing for complete responses, negotiating the settlement, and obtaining approval from the Court for class settlement. I was in regular and frequent communication with Tracee A. Beecroft, the class representative, and kept her advised of the litigation, as well as answering her questions.

10. My hourly rate is $500.00 per hour. This is generally in-line with class action attorneys with 14 years practicing consumer protection litigation. This fee represents the experience and specialization that I have developed in my career in consumer protection litigation. This rate is justified based on the complexity, difficulty and size of this case. This was a difficult case; there were two nationally recognized law firms that vigorously defended the action. The case presented unique difficulty because of the web of foreign, corporate entities that make up the Defendant's parent company. The total lodestar calculated as suggested above for Heaney Law Firm, LLC, is $37,650.00. In addition, Heaney Law Firm, LLC, spent a total of $2,769.19 of out-of-pocket expenses. A percentage of the fund approach for awarding attorneys' fees is appropriate in this case.

11. Plaintiff Tracee A. Beecroft was an outstanding class representative. She put in considerable time ensuring that the interests of the class were adequately protected in this action, including working with class counsel to investigate the case, responding to written discovery, keeping abreast of the proceedings through litigation and settlement, and reviewing and ultimately approving the proposed settlement. If Ms. Beecroft had not pursued this matter, it is unlikely any of the other class members would have pursued an individual or class action case against the Defendant. Through her persistence, efforts and concern, the claiming Class Members are receiving a monetary award and an excellent outcome to this case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: **December 14, 2017**

s/ Mark L. Heaney
Mark L. Heaney