

1 LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
2 Jonathan D. Selbin (State Bar No. 170222)
jselbin@lchb.com
3 Douglas I. Cuthbertson (admitted *pro hac vice*)
dcuthbertson@lchb.com
4 Sean A. Petterson (admitted *pro hac vice*)
spetterson@lchb.com
5 250 Hudson Street, 8th Floor
New York, NY 10013
6 Telephone: (212) 355-9500

MEYER WILSON CO., LPA
Matthew R. Wilson
(State Bar No. 290473)
mwilson@meyerwilson.com
Michael J. Boyle, Jr.
(State Bar No. 258560)
mboyle@meyerwilson.com
Jared W. Connors (admitted
pro hac vice)
jconnors@meyerwilson.com
305 W. Nationwide Blvd
Columbus, OH 43215
Telephone: (614) 224-6000

7 LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
8 Daniel M. Hutchinson (State Bar No. 239458)
dhutchinson@lchb.com
9 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
10 Telephone: (415) 956-1000

BURKE LAW OFFICES, LLC
Alexander H. Burke (admitted
pro hac vice)
ABurke@BurkeLawLLC.com
909 Davis St., Suite 500
Evanston, IL 60201
Telephone: (312) 729-5288

11 *Attorneys for Plaintiff Jenny Brown and the Class*
12 *[Additional Counsel Appear on Signature Page]*

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 JENNY BROWN and CARMEN
MONTIJO, on behalf of themselves
and all others similarly situated,

17 Plaintiffs,

18 v.

19 DIRECTV, LLC,

20 Defendant.

Case No. 2:13-cv-01170-DMG-E

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND
CERTIFICATION OF
SETTLEMENT CLASS**

Date: August 19, 2022
Time: 10:00 A.M.
Place: Courtroom 8C

Hon. Dolly M. Gee

TABLE OF CONTENTS

| | | |
|----|---|-------------|
| 1 | | |
| 2 | | |
| 3 | | Page |
| 4 | INTRODUCTION | 1 |
| 5 | BACKGROUND | 2 |
| 6 | A. Pleadings and Motion to Dismiss | 2 |
| 7 | B. Plaintiff’s Motion for Class Certification | 3 |
| 8 | C. Plaintiff’s Extensive Discovery and Summary Judgment Motions..... | 3 |
| 9 | D. The Parties’ Pre-Trial Motions..... | 5 |
| 10 | E. Settlement Negotiations | 6 |
| 11 | THE SETTLEMENT TERMS | 6 |
| 12 | A. The Settlement Class..... | 6 |
| 13 | B. Monetary Settlement Payment | 7 |
| 14 | C. The Class Notice Plan | 8 |
| 15 | 1. Direct Notice and Claim Process..... | 8 |
| 16 | 2. Settlement Website | 8 |
| 17 | 3. Toll-Free Number | 9 |
| 18 | 4. CAFA Notice..... | 9 |
| 19 | D. Opportunity to Opt Out and Object, and Appear at Hearing..... | 9 |
| 20 | E. Scope of Release..... | 9 |
| 21 | F. Payment of Notice and Administration Costs..... | 10 |
| 22 | G. Class Representative’s Application for Incentive Award | 10 |
| 23 | H. Class Counsel’s Application for Attorneys’ Fees And Costs..... | 10 |
| 24 | I. Remaining Funds and Redistribution | 10 |
| 25 | ARGUMENT..... | 11 |
| 26 | I. The settlement satisfies all requirements for preliminary approval..... | 11 |
| 27 | A. The <i>Churchill</i> factors are satisfied. | 11 |
| 28 | 1. Plaintiff had a strong case, but the significant risk, expense and delay of further litigation weigh in favor of approving the settlement. | 11 |
| | 2. The amount offered in settlement provides substantial relief. | 13 |
| | 3. This case settled on the eve of trial, which confirms that the Settlement is based on a full and complete assessment of the claims and defenses..... | 15 |
| | 4. The Settlement is an excellent result. | 16 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS
(continued)

| | Page |
|--|-------------|
| B. The Rule 23(e)(2) factors are satisfied. | 16 |
| 1. Class Counsel and Ms. Brown adequately represented the class. | 17 |
| 2. The parties reached the Settlement as the result of arm’s length negotiation with an experienced mediator. | 17 |
| 3. The relief provided by the Settlement is adequate in light of the distribution method and potential attorney’s fees. | 18 |
| 4. The Settlement treats class members equitably. | 21 |
| II. The Court should amend the class definition for purposes of settlement..... | 22 |
| III. The notice plan complies with Rule 23(e)(1) and due process..... | 23 |
| CONCLUSION | 25 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page

Cases

Adams v. AllianceOne Receivables Mgmt., Inc.,
No. 3:08-cv-00248-JAH-WVG (S.D. Cal. Sept. 28, 2012).....14

Amchem Prods. v. Windsor,
521 U.S. 591 (1997).....24

Arthur v. SLM Corp.,
10-cv-0198-JLR (W.D. Wash.)15

Barr v. Am. Ass’n of Political Consultants, Inc.,
140 S. Ct. 2335 (2020)12

Bell Atlantic Corp. v. Bolger,
2 F.3d 1304 (3d Cir. 1993).....16

Bloom v. Jenny Craig, Inc.,
No. 1:18-cv-21820 (S.D. Fla.).....15

Briseño v. Henderson,
998 F.3d 1014 (9th Cir. 2021).....18

Brown v. DirecTV,
2022 WL 1591325 (C.D. Cal. Mar. 31, 2022)12

Brown v. DIRECTV, LLC,
562 F. Supp. 3d 590 (C.D. Cal. 2021)11

Churchill Village, LLC v. General Electric,
361 F.3d 566 (9th Cir. 2004).....11

Community Res. For Indep. Living v. Mobility Works of Cal.,
533 F. Supp. 3d 881 (N.D. Cal. 2020).....17

Conti v. Am. Honda Motor Co.,
2022 U.S. Dist. LEXIS 1561 (C.D. Cal. Jan. 4, 2022)..... 17, 18

Cottle v. Plaid Inc.,
340 F.R.D. 356 (N.D. Cal. 2021)passim

Dakota Med., Inc. v. RehabCare Grp., Inc.,
2017 WL 4180497 (E.D. Cal. Sep. 21, 2017).....20

Esomonu v. Omnicare, Inc.,
No. 15-cv-2003 (N.D. Cal.).....15

Estrada v. iYogi, Inc.,
2015 WL 5895942 (E.D. Cal. Oct. 6, 2015)14

Feltzs v. Cox Comms. Cal., LLC,
2022 WL 2079144 (C.D. Cal. Mar. 2, 2022)22

Fox v. Asset Acceptance, LLC,
No. 2:14-cv-00734-GW-FFM (C.D. Cal. June 30, 2016)15

Hageman v. AT&T Mobility LLC,
2015 WL 9855925 (D. Mont. Feb. 11, 2015)20

Hanley v. Tampa Bay Sports & Entm’t LLC,
No. 19-cv-00550 (M.D. Fla.).....15

TABLE OF AUTHORITIES
(continued)

| | Page |
|----|-------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |
| 16 | |
| 17 | |
| 18 | |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |
| 26 | |
| 27 | |
| 28 | |
| | 15 |

TABLE OF AUTHORITIES
(continued)

| | Page |
|----|-------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |
| 16 | |
| 17 | |
| 18 | |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |
| 26 | |
| 27 | |
| 28 | |

Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.,
221 F.R.D. 523 (C.D. Cal. 2004)..... 12, 14

Ontiveros v. Zamora,
303 F.R.D. 356 (E.D. Cal. 2014).....16

Perks v. Activehours, Inc.,
2021 WL 1146038 (N.D. Cal. Mar. 25, 2021)21

Physicians Healthsource, Inc. v. A-S Medication Sols., LLC,
950 F.3d 959 (7th Cir. 2020).....13

Ramirez v. Rite Aid Corp.,
2022 U.S. Dist. LEXIS 109069 (C.D. Cal. May 3, 2022)22

Rodriguez v. W. Publishing Corp.,
563 F.3d 948 (9th Cir. 2009).....17

Rose v. Bank of Am. Corp.,
2014 WL 4273358 (N.D. Cal., Aug. 29, 2014).....14

Saucillo v. Peck,
25 F.4th 1118 (9th Cir. 2022).....17

Sherman v. Kaiser Found. Health Plan, Inc.,
13-cv-00981-JAH-JMS (S.D. Cal.)15

Spann v. J.C. Penney Corp.,
314 F.R.D. 312 (C.D. Cal. 2016).....13

Spencer-Ruper v. Scientiae LLC,
2021 U.S. Dist. LEXIS 204242 (C.D. Cal. Sep. 24, 2021)18

Steinfeld v. Discover Fin. Servs.,
No. C 12-01118 (N.D. Cal. Mar. 10, 2014)14

Tarlecki v. Bebe Stores, Inc.,
2009 WL 3720872 (N.D. Cal. Nov. 3, 2009).....20

Torrisi v. Tucson Elec. Power Co.,
8 F.3d 1370 (9th Cir. 1993).....25

Vandervort v. Balboa Capital Corp.,
8 F. Supp. 3d 1200 (C.D. Cal. 2014)20

Wallace v. Countrywide Home Loans, Inc.,
2014 WL 12691582 (C.D. Cal. July 2, 2014)23

Wang v. Chinese Daily News, Inc.,
737 F.3d 538 (9th Cir. 2013).....23

Statutes

28 U.S.C. § 1715.....9

47 U.S.C. § 227(b)(3)8, 14

Rules

FED. R. CIV. P. 23(c)(2)(B).....24

FED. R. CIV. P. 23(e)(1).....24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

| | Page |
|---|-------------|
| FED. R. CIV. P. 23(e)(2)..... | 11, 16 |
| FED. R. CIV. P. 23(e)(2)(A) | 17 |
| FED. R. CIV. P. 23(e)(2)(B)..... | 17 |
| FED. R. CIV. P. 23(e)(2)(C)..... | 19 |
| FED. R. CIV. P. 23(e)(2)(D) | 21 |
| FED. R. CIV. P. 23(e)(3)..... | 19, 21 |
| Other Authorities | |
| 4 William Rubenstein, <i>Newberg on Class Actions</i> (5th ed. 2020) | 21, 22 |
| Brian Fitzpatrick, <i>A Fiduciary Judge’s Guide to Awarding Fees in Class Actions</i> , 89 FORDHAM L. REV. 1151 (2021)..... | 20 |
| FED. R. CIV. P. 23, 2018 advisory committee note..... | 17, 21 |
| FTC, <i>Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns</i> 11 (2019), https://bit.ly/3vdk7jL | 13 |

1 **INTRODUCTION**

2 Plaintiff Jenny Brown (“Plaintiff”) respectfully moves the Court for
3 preliminary approval of the nationwide class action settlement (“Settlement”)
4 reached between herself and DIRECTV, LLC (“Defendant”). The proposed
5 Settlement would fully and finally resolve all claims¹ in the above-entitled action
6 (the “Action”) under the Telephone Consumer Protection Act (“TCPA”). The
7 Settlement requires DIRECTV to pay an all-cash, non-reversionary sum of
8 \$17,000,000 into a settlement fund (“Settlement Fund”).

9 As this Court well-knows, Ms. Brown and her counsel extensively litigated
10 this matter for nearly a decade and reached this Settlement days before trial.
11 Plaintiff survived a motion to dismiss, obtained a certified class, conducted
12 extensive discovery and expert work, moved twice affirmatively for—and won, in
13 part—summary judgment, survived a motion for decertification, and won critical
14 motions *in limine* in the lead up to a trial. Armed with thorough knowledge of all
15 relevant facts, the Parties participated in an in-person weekend mediation session
16 with Robert Meyer (JAMS), and continued negotiations into Memorial Day
17 weekend before reaching this agreement.

18 The Settlement is tailored to ensure payment only to the certified Class of
19 non-customers who received prerecorded debt collection calls from DIRECTV’s
20 debt collectors Credit Management L.P. (“CMI”), iQor, Inc. (“iQor”), Enhanced
21 Recovery Company, LLC (“ERC”), and/or AFNI, Inc. (“AFNI”). Specifically,
22 although these debt collectors coded approximately 220,000 unique phone numbers
23 as wrong numbers, the number of *Settlement Class Members*—that is, true non-
24 customers—is lower. Targeted settlement class notice will ensure that each
25 Settlement Class Member who files a qualified claim will receive a *pro rata* cash
26 payment. Only non-customers will recover. No money will be paid to non-

27 _____
28 ¹ As part of the Settlement, the parties have reached an individual resolution of Plaintiff Carmen Montijo’s claims.

1 Settlement Class Members, and no money will revert back to DIRECTV.

2 Ms. Brown reasonably expects that payments to Settlement Class Members
3 who make a claim and who received calls from CMI or iQor—for whom the Court
4 granted summary judgment—will approach or exceed statutory damages of
5 \$500/call. Settlement Class Members who make a claim and received calls from
6 AFNI and ERC will receive half that amount to account for their risk at trial.

7 The proposed Settlement was the result of difficult and thorough litigation
8 and negotiations. Ms. Brown submits that the Settlement satisfies the Ninth
9 Circuit’s criteria for preliminary settlement approval and that it is fair, reasonable,
10 and adequate. The expected payments per-call are among the highest for a wrong-
11 number TCPA settlement. Ms. Brown respectfully requests that the Court grant her
12 motion for preliminary approval, find that it will likely be able to approve the
13 proposal, and approve the proposed Notice Plan.

14 **BACKGROUND**

15 **A. Pleadings and Motion to Dismiss**

16 On May 9, 2012, former plaintiff Cheryl Swope filed a class action in the
17 Eastern District of Missouri against CMI. *Swope v. Credit Management, LP*, No.
18 4:12-cv-832 (E.D. Mo.). Dkt. 1.² On November 21, 2012, Plaintiff Jenny Brown
19 joined that action as an additional named Plaintiff. Dkt. 48.

20 On February 19, 2013, Ms. Brown’s claims against CMI were severed from
21 the *Swope* action and transferred to this Court. No. 2:13-cv-1170 (C.D. Cal.). Dkt.
22 71. On October 1, 2013, Ms. Brown filed a Fourth Amended Complaint adding
23 DIRECTV as a Defendant. Dkt. 122. The Fourth Amended Complaint alleged that
24 DIRECTV violated the TCPA by using an artificial or prerecorded voice to call cell
25 phones, without the prior express consent of Ms. Brown and the potential class
26 members. *Id.* On May 27, 2014, the Court denied DIRECTV’s motion to strike

27 _____
28 ² All cites to “Dkt.” refer to the Action’s docket.

1 portions of Ms. Brown’s complaint. Dkt. 153.

2 **B. Plaintiff’s Motion for Class Certification**

3 In late 2014, the Court granted DIRECTV’s motion to stay the case pending
4 resolution of two petitions before the FCC. Dkt. 198. At the same time, Magistrate
5 Judge Eick denied Plaintiff’s motion to compel class discovery. Dkt. 196. The
6 Court lifted the stay on April 27, 2018. Dkt. 220. Thereafter, Plaintiff moved for
7 class certification without the benefit of class discovery. Dkt. 222. After full
8 briefing, on March 29, 2019, the Court certified a class, as well as subclass defined
9 as, “[a]ll persons residing within the United States who, within four years prior to
10 and after the filing of this action, received a non-emergency telephone call(s) from
11 DIRECTV and/or its third-party debt collectors regarding a debt originally owed to
12 DIRECTV, to a cellular telephone through the use of an artificial or prerecorded
13 voice and who were never DIRECTV customers.” Dkt. 275.

14 On June 3, 2019, the Ninth Circuit denied DIRECTV’s petition for
15 permission to appeal the March 29, 2019, class certification order pursuant to Rule
16 23(f) of the Federal Rules of Civil Procedure.

17 On August 5, 2019, the Court held that certain current or former DIRECTV
18 customers were obligated to arbitrate their TCPA claims. Dkt. 287.

19 On December 18, 2019, the Court ordered a revised class definition: “All
20 persons residing within the United States who, within four years prior to and after
21 the filing of this action, received a non-emergency telephone call(s) from
22 DIRECTV and/or its third-party debt collectors regarding a debt allegedly owed to
23 DIRECTV, to a cellular phone through the use of an artificial or prerecorded voice,
24 and who has not been a DIRECTV customer at any time since October 1, 2004.”
25 Dkt. 300. Through an agreed-upon process, potential class members who met the
26 class definition criteria received due-process notice. Dkt. 317.

27 **C. Plaintiff’s Extensive Discovery and Summary Judgment Motions**

28 Plaintiff conducted extensive party and third-party discovery. *See*

1 Declaration of Daniel M. Hutchinson (“Hutchinson Decl.”) ¶¶ 34-47, 53-87.
2 Throughout the class period, DIRECTV contracted with dozens of debt collection
3 agencies. Plaintiff served subpoenas on each relevant debt collection agency,
4 engaged in extensive meet and confers, and obtained critical documents. *Id.* at ¶¶
5 58-62, 64, 67, 83-84. These third-party discovery efforts required Plaintiff to
6 litigate third-party actions in Florida and North Carolina, to engage with some debt
7 collection agencies’ former employees and bankruptcy counsel, and generally, to
8 contact dozens of individuals to obtain relevant call data. *See, e.g., id.* at ¶ 84
9 (describing motions to compel); Dkt. 484 at 6-10 (detailing Plaintiff’s efforts to
10 obtain DCI call data). These efforts led to agreed-upon declarations with many of
11 DIRECTV’s debt collectors and a deposition of AFNI.³

12 On the party discovery front, Plaintiff obtained more than 200,000 pages of
13 discovery from DIRECTV, obtained DIRECTV’s RMS customer database, and
14 conferred extensively with DIRECTV about DIRECTV’s effort to obtain call data
15 from its debt collection agencies. Hutchinson Decl. ¶¶ 55, 68, 87. Plaintiff also
16 deposed two DIRECTV Rule 30(b)(6) witnesses and all relevant DIRECTV current
17 and former employees. *Id.* at ¶ 82.

18 Plaintiff also submitted two affirmative expert reports and rebutted
19 DIRECTV’s expert. *Id.* at ¶¶ 78-80. Each expert was deposed. *Id.* at ¶ 81. Plaintiff
20 also obtained relevant information from public records requests to federal and state
21 agencies. *Id.* at ¶ 86.

22 On August 27, 2021, Plaintiff marshaled this evidence in an affirmative
23 summary judgment motion for calls made by CMI and iQor. Dkt. 364. The
24 statement of undisputed facts contained 187 facts, 144 of which DIRECTV did not
25 meaningfully dispute. Dkt. 364-2. DIRECTV thereafter moved for summary

26
27 ³ *See* Dkts. 365-14 (iQor); 365-16 (CMI); 365-17 (Alorica); 365-18 (CBE); 365-19
28 (ERC); 365-20 (Declaration of Rafal Leszczynski on behalf of DCI); *see also* Dkt.
373-3 (Dep. of James Hess, Director of Business Development for AFNI).

1 judgment and to decertify the class. Dkts. 373 & 377. On December 1, 2021, the
2 Court issued an omnibus order that: (1) denied DIRECTV’s motion for
3 decertification of the class; (2) granted DIRECTV’s summary judgment motion as
4 to claims based on (i) calls prior to August 14, 2009; (ii) third-party collections
5 calls after December 4, 2015; (iii) calls made by ERC prior to August 6, 2014, by
6 Convergent from October 26, 2008 to May 10, 2016 and November 11, 2016 to
7 February 25, 2019, and by NCO Financial Systems from January 16, 2009 to
8 August 31, 2016; (3) granted Plaintiff’s summary judgment motion as to calls made
9 by iQor and/or CMI from August 14, 2009 to December 4, 2015; and (4) denied as
10 moot Plaintiff’s motion to exclude DIRECTV’s expert report. Dkt. 401. The Court
11 further found that it would enter judgment with regard claims based on iQor and
12 CMI calls following the completion of a claims administration process. *Id.*

13 Because DIRECTV operated under identical contracts with its third-party
14 debt collection agencies, after obtaining leave of court, Plaintiff filed a second
15 summary judgment motion for calls made by AFNI, ERC, and Diversified
16 Consultants Inc. (“DCI”). Dkt. 414. On March 31, 2022, the Court held that: (1)
17 calls made by AFNI and ERC violated the TCPA, but denied Plaintiffs’ motion as
18 to vicarious liability for AFNI and ERC and (2) DCI was DIRECTV’s agent, but
19 trial was necessary for Plaintiff’s TCPA claims based on DCI calls. Dkt. 436.

20 **D. The Parties’ Pre-Trial Motions**

21 The Court set a trial for June 14, 2022, to determine, *inter alia*, DIRECTV’s
22 vicarious liability for calls placed by AFNI and ERC, DIRECTV’s liability for DCI
23 calls, and the Class’s eligibility for treble damages. Dkt. 437. Under this two-month
24 timeline, the parties immediately began filing pre-trial motions, disputed jury
25 instructions, exhibit lists, motions in limine (four from DIRECTV and three from
26 Ms. Brown), *Daubert* motions, and prepared for a pre-trial conference on May 17,
27 2022. Dkts. 441-45, 448-78, 481-98. On May 17, 2022, the Court held its Final
28 Pretrial Conference. Dkt. 502.

1 On May 19, 2022, the Court entered an omnibus order addressing the parties’
2 motions *in limine* and *Daubert* motions. Dkt. 503. Therein, the Court amended the
3 class definition to: “[a]ll persons residing within the United States who, within four
4 years prior to and after the filing of this action, received a non-emergency telephone
5 call(s) from DIRECTV and/or iQor, Inc., Credit Management, LP, AFNI, Inc, or
6 Enhanced Recovery Company, Inc. regarding a debt allegedly owed to DIRECTV,
7 to a cellular telephone through the use of an artificial or prerecorded voice, and who
8 not been a DIRECTV customer at any time since October 1, 2004.” *Id.* By virtue of
9 this Order, named Plaintiff Carmen Montijo was no longer a member of the class,
10 but the Court held that she could pursue her individual claims. *Id.* at 9, n.16.

11 **E. Settlement Negotiations**

12 There is a substantial history of settlement negotiations, all conducted at
13 arm’s-length with the assistance of experienced professional mediators. The parties
14 first mediated for a full day in person with Hon. Irma E. Gonzalez (Ret.) on
15 September 23, 2015, at JAMS Los Angeles. Hutchinson Decl. ¶¶ 46, 97. The
16 parties mediated a second time after class certification and the Court’s first
17 summary judgment order with Hon. Morton Denlow (ret.) of JAMS Chicago via
18 Zoom on December 6, 2021, but again did not reach resolution. *Id.* at ¶ 98. The
19 parties mediated with Robert A. Meyer at JAMS Los Angeles on Saturday May 14,
20 2022, three days before the final pre-trial conference, and *again* did not reach
21 agreement. *Id.* at ¶¶ 100, 105. However, Mr. Meyer continued discussions in the
22 ensuing weeks and the parties reached a settlement in principle late on the Friday of
23 Memorial Day Weekend, May 27, 2022. *Id.* at ¶¶ 111-12.

24 **THE SETTLEMENT TERMS**

25 **A. The Settlement Class**

26 The “Class” or “Settlement Class” means:

27 All persons residing within the United States who, within four years
28 prior to and after the filing of this action, received a non-emergency
telephone call(s) from DIRECTV and/or iQor, Inc., Credit

1 Management, LP, AFNI, Inc, or Enhanced Recovery Company, Inc.
2 regarding a debt allegedly owed to DIRECTV, to a cellular telephone
3 through the use of an artificial or prerecorded voice, and who has not
4 been a DIRECTV customer at any time since October 1, 2004. The
5 Settlement Class encompasses only persons identified by the telephone
6 numbers and calls during the Settlement Class Period in Plaintiff's
7 summary judgment motions. *See* Dkts. 375-1 (CMI), 375-2 (iQor),
8 415-6 (AFNI), and 415-7 (ERC).

9 Excluded from the Settlement Class are: (a) those persons who
10 previously opted out in response to the notice of class certification,
11 identified in Dkt. 420-1, (b) any trial judge that may preside over this
12 case, (c) Defendant as well as any parent, subsidiary, affiliate or
13 control person of Defendant.

14 *See* Settlement Agreement attached hereto (“S.A.”) § 2.27.

15 **B. Monetary Settlement Payment**

16 The Settlement requires DIRECTV to pay an all-cash non-reversionary sum
17 of \$17,000,000. S.A. § 4.01. Out of this Settlement Fund, Settlement Class
18 Members who file a valid and timely claim will receive a Cash Award. *Id.* § 5.02.
19 Cash Awards will be distributed, at the Settlement Class Member’s election, by
20 check or secure electronic payment. *Id.* §§ 10.04, 10.05. Cash Awards will be
21 distributed *pro rata*. *Id.* § 5.04. Settlement Class Members who received calls from
22 iQor and CMI⁴ (for which summary judgment was granted) will get two shares of
23 the *pro rata* distribution. *Id.* §§ 2.06, 5.04. Settlement Class Members who received
24 calls from AFNI and ERC (for which trial remained) will get one *pro rata* share. *Id.*
25 The Settlement Fund also covers (i) all fees and costs incurred by the Claims
26 Administrator; (ii) Class Counsel/Additional Counsel’s Court-approved attorneys’
27 fees and reimbursement of reasonable costs; and (iii) any Court-approved service
28 awards paid to Plaintiff. *Id.* §§ 2.32, 4.01-04, 6.02-03.

Neither the exact number of valid claimants nor exactly how much will remain for Settlement Class Members, once fees and expenses are deducted, is known, but the monetary recovery will be valuable for all Settlement Class Members. As an example, assuming that fees and costs total \$7 million of the \$17

⁴ Ms. Brown was called by CMI. Declaration of Jenny Brown (“Brown Decl.”), ¶ 3.

1 million and roughly 10% of potential Settlement Class Members, or about 22,000
2 individuals, make claims, with 11,000 claimants from the CMI/iQor group and
3 11,000 claimants from the ERC/AFNI group, each pro-rata share will be worth
4 \$303.03. Hutchinson Decl. ¶ 118. Thus, each CMI and iQor class member will be
5 entitled to \$606.06 per call and each ERC and AFNI class member will be entitled
6 to \$303.03 per call. *Id.*⁵ Those amounts are *above* the statutory damages for
7 CMI/iQor class members and roughly what statutory damages would be left for
8 AFNI and ERC class members after costs and fees were deducted. *See* 47 U.S.C. §
9 227(b)(3)(B). Finally, the Settlement also provides that for Settlement Class
10 Members who submit an Approved Claim, DIRECTV shall add their phone number
11 to its internal do-not-call database. S.A. § 4.05.

12 **C. The Class Notice Plan**

13 **1. Direct Notice and Claim Process**

14 The Claims Administrator shall follow a rigorous protocol to first identify the
15 owners of the cellular phone numbers exhibited to Plaintiff’s summary judgment
16 motions using discovery already obtained in this case and reverse lookups and then
17 to determine whether those individuals are exact matches with DIRECTV’s
18 Customer Database, which DIRECTV shall provide to it. S.A. § 5.01. Next, Class
19 Notice will be effectuated to the identified individuals through first-class mail and
20 email (“Direct Notice”). S.A. §§ 9.03, 9.04.

21 Notice recipients will have 90 days to make a claim, either by returning the
22 postcard included in the mailed notice or through the Settlement Website. *Id.* §
23 2.08. Claimants will be required to affirm that they were not DIRECTV customers
24 at any point after October 1, 2004. *Id.* at § 10.02.

25 **2. Settlement Website**

26 The Settlement Administrator will maintain the Settlement Website,
27

28 ⁵ (11,000*\$606.06) + (11,000*303.03) = \$9,999,990.

1 www.dtvprerecordclassaction.com, the same website used during the notice
2 process. S.A. § 9.04. The Settlement Website will contain the Notice documents,
3 the Settlement Agreement and exhibits, and key case filings. *Id.* The Settlement
4 Website will provide for online submission of a Claim Form. *Id.*

5 **3. Toll-Free Number**

6 Anyone can obtain information about the Settlement through the automated
7 toll-free telephone number, which is contained in the notice. *Id.* at § 9.05.

8 **4. CAFA Notice**

9 DIRECTV will provide notice required by 28 U.S.C. § 1715. S.A. § 9.06.

10 **D. Opportunity to Opt Out and Object, and Appear at Hearing**

11 Settlement Class Members will be permitted to exclude themselves from
12 (i.e., opt out of) the Settlement or object to the Settlement no later than sixty (60)
13 days following the Settlement Notice Date. *Id.* at §§ 2.21-22.

14 To opt out, a Settlement Class Member must complete an exclusion form
15 with: (1) his or her full name, address, and telephone number where he or she may
16 be contacted; (2) the telephone number(s) on which he or she was called; and (3) a
17 statement in the written request that he or she wishes to be excluded from the
18 Settlement. *Id.* at § 11.02(a).

19 To object, a Settlement Class Member must mail a written objection to the
20 Clerk of Court. *Id.* at § 11.03. Any Settlement Class Member who fails to object to
21 the Settlement in the manner described in the Class Notice and consistent with this
22 Section shall be deemed to have waived any such objection. *Id.* Subject to Court
23 approval, any Settlement Class Member who mails a timely written objection in
24 accordance with Section 11.03 may appear, in person or by counsel, at the Final
25 Approval Hearing. *Id.* at § 11.04.

26 **E. Scope of Release**

27 Class Members are releasing any and all claims in this action relating to the
28 placement of collections calls by DIRECTV, or by CMI, iQor, AFNI, and/or ERC

1 regarding a debt allegedly owed to DIRECTV, during the Settlement Class Period,
2 including claims arising under the TCPA. S.A. § 14.01.

3 **F. Payment of Notice and Administration Costs**

4 All reasonable costs and expenses associated with giving notice to the Class
5 Members and for administration of the Settlement shall be deducted from the
6 Settlement Fund prior to paying any settlement checks to Settlement Class
7 Members. S.A. §§ 4.03, 5.03(c).

8 **G. Class Representative's Application for Incentive Award**

9 Class Counsel will request an Incentive Award of \$10,000 from the
10 Settlement Fund for Ms. Brown, in recognition of the significant time and effort she
11 invested in this litigation, including being deposed, providing discovery, and
12 preparing for trial, without which this Settlement would not be possible. S.A. §
13 6.03; Brown Decl. ¶ 4. The Settlement is not conditioned upon Court approval of
14 the Incentive Award. S.A. § 6.04.

15 **H. Class Counsel's Application for Attorneys' Fees And Costs**

16 Class Counsel will apply to the Court for an award of attorneys' fees of up to
17 \$5,610,000 (33% of the Settlement Fund) and litigation costs to be distributed from
18 the Settlement Fund. S.A. § 6.02. At least thirty (30) days before the opt out and
19 objection deadline, Plaintiff will file a motion for an award of attorneys' fees and an
20 incentive award for Ms. Brown. *Id.* §§ 6.02-03. The Settlement Administrator will
21 post the motion on the Settlement Website. *Id.* § 9.04.

22 **I. Remaining Funds and Redistribution**

23 If any checks remain uncashed more than 180 days after the date on the
24 check, the amounts of such checks will be redistributed on a *pro rata* basis to the
25 eligible Settlement Class Members if, after administration, the redistribution is
26 economically feasible (i.e., all Settlement Class Members who have made a valid
27 and timely claim equal to or greater than \$1.00 per qualifying claimant). S.A. §
28 10.06(a). If redistribution is not economically feasible, Plaintiff will apply to the

1 Court for approval of a *cy pres* distribution to one or more non-profit recipients. *Id.*

2 **ARGUMENT**

3 **I. The settlement satisfies all requirements for preliminary approval.**

4 In considering preliminary approval, the court examines “(1) the fairness
5 factors set forth in *Churchill Village, LLC v. General Electric*, 361 F.3d 566, 575
6 (9th Cir. 2004); and (2) the factors in Rule 23(e)(2).” *Cottle v. Plaid Inc.*, 340
7 F.R.D. 356, 372 (N.D. Cal. 2021). The Settlement satisfies both.

8 **A. The *Churchill* factors are satisfied.**

9 The Ninth Circuit considers eight, non-dispositive factors when determining
10 to approve a settlement: “(1) the strength of the plaintiffs’ case; (2) the risk,
11 expense, complexity, and likely duration of further litigation; (3) the risk of
12 maintaining class action status throughout the trial; (4) the amount offered in
13 settlement; (5) the extent of discovery completed and the stage of the proceedings;
14 (6) the experience and views of counsel; (7) the presence of a governmental
15 participant; and (8) the reaction of the class members to the proposed settlement.”
16 *Churchill*, 361 F.3d at 575 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026
17 (9th Cir. 1998)); accord *Kim v. Allison*, 8 F.4th 1170, 1178 (9th Cir. 2021). Each
18 applicable factor weighs in favor of approval.

19 **1. Plaintiff had a strong case, but the significant risk, expense
20 and delay of further litigation weigh in favor of approving
the settlement.**

21 “The first three factors are addressed together and require the court to assess
22 the plaintiff’s likelihood of success on the merits and the range of possible recovery
23 versus the risks of continued litigation and maintaining class action status through
24 the duration of the trial.” *Cottle*, 340 F.R.D. at 373 (quotation omitted).

25 *Strength on the Merits.* Ms. Brown has an undeniably strong case on the
26 merits. She won summary judgment on behalf of CMI and iQor class members as
27 to their prima facie case *and* vicarious liability, which appears to be a first in this
28 Circuit. *See Brown v. DIRECTV, LLC*, 562 F. Supp. 3d 590 (C.D. Cal. 2021). She

1 also defeated a motion to decertify, *see id.*, and won partial summary judgment as
2 to calls made by AFNI and ERC, leaving only vicarious liability as to those vendors
3 for trial. *See Brown v. DirecTV*, 2022 WL 1591325 (C.D. Cal. Mar. 31, 2022).

4 However, further litigation would have involved substantial risk and
5 considerable delay. DIRECTV’s serial briefing regarding decertification, summary
6 judgment, motions in limine, and the admissibility of Ms. Brown’s evidence
7 demonstrate the risks of proceeding. Further, the undetermined claims
8 administration process could have imposed barriers on class members receiving
9 judgment, had DIRECTV prevailed on that briefing.

10 As to delay, Ms. Brown would not only have to prevail at trial, but also retain
11 any favorable judgment on appeal. Litigating this case to trial and through any
12 appeals would be expensive and time-consuming. For example, in an analogous
13 TCPA trial—*Krakauer v. Dish Network, LLC*, Case No. 1:14-cv-333 (M.D.N.C.)—
14 it took years of post-trial briefing, claims administration, and appeals for class
15 members to receive payment. This settlement, by contrast, provides the Class with
16 immediate relief. *See Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D.
17 523, 526 (C.D. Cal. 2004) (“The Court shall consider the vagaries of litigation and
18 compare the significance of immediate recovery by way of the compromise to the
19 mere possibility of relief in the future, after protracted and expensive litigation.”).⁶

20 *Range of Possible Recovery.* The range of possible recovery depended
21 greatly on the claims administration process, an issue the Court had not yet decided.
22 When a critical issue related to classwide damages calculations remains undecided,
23

24 ⁶ In addition, Plaintiff faced external risks from the ever-changing legal landscape
25 of the TCPA. The Court previously stayed this Action pending FCC rulemaking
26 that could have eviscerated Plaintiff’s claims. During the pendency of this case, the
27 Supreme Court considered the constitutionality of the TCPA as a whole. *See Barr*
28 *v. Am. Ass’n of Political Consultants, Inc.*, 140 S. Ct. 2335 (2020). And if the Court
would have found the TCPA to be unconstitutional, Plaintiff’s claims would have
suddenly ceased to exist—extinguishing any hope of a recovery.

1 the looming uncertainty weighs strongly in favor of settlement. *See Spann v. J.C.*
2 *Penney Corp.*, 314 F.R.D. 312, 326 (C.D. Cal. 2016) (dispute over measure of
3 restitution supported settlement where adverse decision would have significantly
4 reduced the class’s recovery and created additional delay and expense).

5 The range of possible recovery could have been reduced had DIRECTV
6 prevailed in its anticipated claims administration arguments that discovery and
7 claims from each class member was required before judgment was entered. While
8 Plaintiff would have argued that automatic payment with an opt-out process was
9 appropriate for some or all class members under *Physicians Healthsource, Inc. v. A-*
10 *S Medication Sols., LLC*, 950 F.3d 959 (7th Cir. 2020) and *Krakauer v. Dish*
11 *Network, LLC*, 2017 WL 3206324 (M.D.N.C. July 27, 2017), the issue was not yet
12 resolved. Had DIRECTV prevailed, its liability would likely have been capped by
13 the number of people who filed a claim—which could have been a small number.
14 *See* FTC, *Consumers and Class Actions: A Retrospective and Analysis of Settlement*
15 *Campaigns* 11 (2019), <https://bit.ly/3vdk7jL> (in survey of claims-made settlements,
16 “the median calculated claims rate was 9%, and the weighted mean (*i.e.*, cases
17 weighted by the number of notice recipients) was 4%”). This settlement provides
18 class members with a sum certain that accounts for that risk.

19 In sum, securing \$17 million now will provide immediate relief to Settlement
20 Class Members who submit valid claims. Ms. Brown and her counsel carefully
21 balanced the risks of continuing to engage in protracted and contentious litigation
22 against the benefits to the Settlement Class, including the amount of the Settlement
23 Fund and the deterrent effects it would have. Hutchinson Decl. ¶¶ 113-20. The
24 Settlement provides a fair and reasonable alternative to continued litigation.

25 **2. The amount offered in settlement provides substantial relief.**

26 “The fourth *Churchill* factor looks at the amount of recovery offered in
27 settlement.” *Cottle*, 340 F.R.D. at 374. As set forth above, the recovery is \$17
28 million. S.A. § 4.01.

1 Beyond the total Settlement Fund amount, the relief provided should be
2 judged based on how much each call is worth. Here, the amounts are substantial.
3 Class Counsel’s reasonable estimate of a 10% claims rate from potential Settlement
4 Class Members with \$10 million remaining in the Settlement Fund provides for
5 approximately \$303.03 per call for Settlement Class Members who received AFNI
6 and ERC calls, and \$606.06 per call for CMI and iQor calls. *See* Hutchinson Decl. ¶
7 118. This amount compares favorably with the TCPA’s statutory damages of \$500
8 for each negligent violation and \$1,500 for each willful violation. *See* 47 U.S.C. §
9 227(b)(3). Indeed, it is quite possible that CMI and iQor Class Members will
10 receive more from the Settlement than they would have received if the Court’s
11 liability judgment was upheld on appeal. AFNI and ERC Class Members will
12 receive at least a significant portion of their statutory damages amount, which
13 would have been reduced by fees and costs. It is well settled that a proposed
14 settlement need not provide class members with the type of recovery they could
15 obtain following a total win at trial. *See Nat’l Rural Telecomm. Coop.*, 221 F.R.D.
16 at 527 (“well-settled law that a proposed settlement may be acceptable even though
17 it amounts to only a fraction of the potential recovery”); *In re Omnivision Tech.,*
18 *Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008) (approving settlement of just over 9%
19 of maximum potential recovery).

20 The estimated award is equal to or exceeds payments in other TCPA
21 settlements.⁷ The Settlement also fares well when considering the fund on an

22 ⁷ *See, e.g., Steinfeld v. Discover Fin. Servs.*, No. C 12-01118, Dkt. 96 at ¶ 6 (N.D.
23 Cal. Mar. 10, 2014) (claimants received \$46.98); *Adams v. AllianceOne*
24 *Receivables Mgmt., Inc.*, No. 3:08-cv-00248-JAH-WVG, Dkt. 137 (S.D. Cal. Sept.
25 28, 2012) (claimants received \$40); *Kramer v. Autobyte, Inc., et al.*, No. 10-cv-
26 2722, Dkt. 148 (N.D. Cal. 2012) (cash payment of \$100 to each class member);
27 *Estrada v. iYogi, Inc.*, 2015 WL 5895942, at *7 (E.D. Cal. Oct. 6, 2015) (granting
28 preliminary approval to TCPA settlement where class members estimated to receive
\$40); *Rose v. Bank of Am. Corp.*, 2014 WL 4273358, at *10 (N.D. Cal. Aug. 29,
2014) (claimants estimated to receive \$20 to \$40); *In re Capital One Tel. Consumer*
Prot. Act Litig. (In re Capital One), 80 F. Supp. 3d 781, 787 (N.D. Ill. 2015) (each

1 aggregate basis.⁸ Therefore, this factor supports approval.

2 **3. This case settled on the eve of trial, which confirms that the**
3 **Settlement is based on a full and complete assessment of the**
4 **claims and defenses.**

5 Under the fifth *Churchill* factor, courts consider the stage of the proceedings
6 and ask whether the settlement was reached “following sufficient discovery and
7 genuine arms-length negotiation,” which “suggests that the parties arrived at a
8 compromise based on a full understanding of the legal and factual issues
9 surrounding the case.” *Cottle*, 340 F.R.D. at 375 (quotation omitted). Here, the
10 parties concluded fact, third-party, and expert discovery, extensive summary
11 judgment briefing, and pre-trial briefing. *See generally* Hutchinson Decl. ¶¶ 34-47,
12 53-112. There is no dispute that Plaintiff had sufficient information to “make an
13 informed decision about settlement.” *Cottle*, 340 F.R.D. at 375.

14 Moreover, that this case settled on the eve of trial confirms that “the Parties
15 were in a position to clearly and frankly evaluate the strengths and weaknesses of
16 their respective cases.” *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1302

17 claimant received \$34.60); *Arthur v. SLM Corp.*, 10-cv-0198-JLR (W.D. Wash.)
18 (class members were to receive between \$20 and \$40 dollars per claim); *Fox v.*
19 *Asset Acceptance, LLC*, No. 2:14-cv-00734-GW-FFM (C.D. Cal. June 30, 2016)
20 (estimating recovery between \$11.79 and \$28.22 per person at time of fairness
21 hearing, from the cash component of the settlement); *Sherman v. Kaiser Found.*
Health Plan, Inc., 13-cv-00981-JAH-JMS (S.D. Cal.) (individual recovery of
\$39.68 per claimant).

22 ⁸ *See, e.g., Medina v. Enhanced Recovery Co.*, No. 2:15-cv-14342 (S.D. Fla.)
23 (\$1.45 million settlement in wrong number debt collection case with 156,000 class
24 members); *In re Collecto, Inc., TCPA Litig.*, No. 1:14-md-2513 (D. Mass.) (\$3.2
25 million settlement in wrong number debt collection case with about 206,000 class
26 members); *Bloom v. Jenny Craig, Inc.*, No. 1:18-cv-21820 (S.D. Fla.) (\$3 million
27 for class of 628,610); *Esomonu v. Omnicare, Inc.*, No. 15-cv-2003 (N.D. Cal.) (\$1.3
28 million for class of approximately 43,000); *Hanley v. Tampa Bay Sports & Entm’t*
LLC, No. 19-cv-00550 (M.D. Fla.) (\$2.25 million for class of 181,000); *Larson v.*
Harman Mgmt. Corp., 2019 WL 7038399, at *2 (E.D. Cal. Dec. 20, 2019) (\$4
million for class of 232,602).

1 (S.D. Cal. 2017). Therefore, the stage of proceedings favors preliminary approval.
2 *See Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1314 (3d Cir. 1993) (holding that
3 settlement was “more likely to reflect the true value of the claim and be fair”
4 because it was reached “on the eve of trial, after discovery”).

5 **4. The Settlement is an excellent result.**

6 The opinion of experienced counsel supporting the settlement is entitled to
7 considerable weight. *See, e.g., Ontiveros v. Zamora*, 303 F.R.D. 356, 371 (E.D. Cal.
8 2014). Based on these standards, Class Counsel respectfully submit that, for the
9 reasons detailed above, the Court should preliminarily approve the proposed
10 Settlement as fair, reasonable and adequate. Hutchinson Decl. ¶ 120.

11 The Parties are represented by counsel experienced in complex class action
12 litigation. Class Counsel have extensive experience in class actions, as well as
13 particular expertise in TCPA class actions. Hutchinson Decl. ¶¶ 4-22; Declaration of
14 Alexander Burke (“Burke Decl.”), ¶¶ 2-7; Declaration of Matthew R. Wilson
15 (“Wilson Decl.”), ¶¶ 4-7. Class Counsel believe that the proposed Settlement is fair,
16 reasonable and adequate and in the best interests of the Class Members. *See*
17 Hutchinson Decl. ¶ 120; Burke Decl. ¶ 11; Wilson Decl. ¶ 9.⁹

18 **B. The Rule 23(e)(2) factors are satisfied.**

19 Rule 23(e)(2) provides that courts should also consider whether: (1) “the
20 class representatives and class counsel have adequately represented the class”; (2)
21 “the proposal was negotiated at arm’s length”; (3) “the relief provided for the class
22 is adequate”; and (4) the proposal treats class members equitably relative to one
23 another.” FED. R. CIV. P. 23(e)(2). Those factors are satisfied here.

24
25
26 ⁹ The seventh factor—presence of a government participant—is not applicable.
27 Consideration of the eighth factor—reaction of class members—should be deferred
28 until the final approval hearing, at which point the period for opt-outs and
objections will be complete. *See Cottle*, 340 F.R.D. at 375-76.

1 **1. Class Counsel and Ms. Brown adequately represented the**
2 **class.**

3 When considering adequacy of representation under Rule 23(e)(2)(A), courts
4 look to factors such as “the nature and amount of discovery in this case or other
5 cases, or the actual outcomes of other cases, which may indicate whether counsel
6 negotiating on behalf of the class had an adequate information base.” *Conti v. Am.*
7 *Honda Motor Co.*, 2022 U.S. Dist. LEXIS 1561, *24 (C.D. Cal. Jan. 4, 2022)
8 (quotation marks omitted) (quoting FED. R. CIV. P. 23, 2018 advisory committee
9 note). Here, and as discussed above, Class Counsel and Ms. Brown ably
10 represented the class by exhaustively pursuing discovery and litigating this case
11 until trial was days away. *See supra* Section I.A.3. Class Counsel are experienced
12 in complex TCPA litigation, and they believe this settlement is in the best interests
13 of the Class. *See supra* Section I.A.4. Ms. Brown also diligently represented the
14 class, including by sitting for a deposition, providing discovery, and preparing for
15 trial. Brown Decl. ¶ 4. This factor weighs in favor of approval.

16 **2. The parties reached the Settlement as the result of arm’s**
17 **length negotiation with an experienced mediator.**

18 Another important consideration is whether the settlement “was negotiated at
19 arm’s length.” FED. R. CIV. P. 23(e)(2)(B). Although this factor does not create a
20 presumption of fairness, *see Saucillo v. Peck*, 25 F.4th 1118, 1132 (9th Cir. 2022),
21 “such negotiations can weigh in favor of approval,” *Community Res. For Indep.*
22 *Living v. Mobility Works of Cal.*, 533 F. Supp. 3d 881, 888 (N.D. Cal. 2020); *see*
23 *also Rodriguez v. W. Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put
24 a good deal of stock in the product of an arms-length, non-collusive, negotiated
25 resolution.”).

26 Here, the Parties spent considerable time and effort negotiating the
27 Settlement, including mediating with three separate experienced mediators,
28 concluding with the successful efforts of Robert Meyer of JAMS. *See* S.A. § 1.15;
Declaration of Robert Meyer, ¶¶ 3-8; Hutchinson Decl. ¶¶ 46, 98, 100, 105, 111-12.

1 This strongly indicates that there was no collusion. *See Conti*, 2022 U.S. Dist.
2 LEXIS 1561 at *26 (presence of a mediator suggests negotiations “were conducted
3 in a manner that would protect and further class interests”); *Spencer-Ruper v.*
4 *Scientiae LLC*, 2021 U.S. Dist. LEXIS 204242, at *8 (C.D. Cal. Sept. 24, 2021)
5 (“an experienced mediator, intimately familiar with the instant litigation and TCPA
6 litigation as a whole, agreed with the parties and helped them craft a fair
7 compromise”).

8 When analyzing Rule 23(e)(2)(B), courts also ask whether any of the *In re*
9 *Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011) factors
10 are present, which could suggest the presence of collusion. *See Cottle*, 340 F.R.D.
11 at 376 (citing *Briseño v. Henderson*, 998 F.3d 1014 (9th Cir. 2021)). The
12 *Bluetooth* factors are: “(1) when counsel receive a disproportionate distribution of
13 the settlement or when the class receives no monetary distribution but class counsel
14 are amply rewarded; (2) when the payment of attorneys’ fees is separate and apart
15 from class funds; and (3) when the parties arrange for benefits that are not awarded
16 to revert to the defendants rather than being added to the class fund.” *Cottle*, 340
17 F.R.D. at 376 (quotation marks omitted). As to the first factor, Settlement Class
18 Members may claim a monetary distribution and Class Counsel’s attorneys’ fees
19 are not disproportionate. S.A. §§ 6.02, 6.04. As to the second factor, there is no
20 “clear sailing” agreement as the fees will be paid from the Settlement Fund and
21 nothing prevents DIRECTV from objecting to Class Counsel’s fee request. *Id.*; *see*
22 *Cottle*, 340 F.R.D. at 376. As to the final factor, none of the Settlement Fund will
23 revert to DIRECTV. S.A. § 4.04.

24 **3. The relief provided by the Settlement is adequate in light of**
25 **the distribution method and potential attorney’s fees.**

26 Rule 23(e)(2)(C) requires courts to consider whether “the relief provided for
27 the class is adequate, taking into account: (i) the costs, risks, and delay of trial and
28 appeal; (ii) the effectiveness of any proposed method of distributing relief to the

1 class, including the method of processing class-member claims; (iii) the terms of
2 any proposed award of attorney’s fees, including timing of payment; and (iv) any
3 agreement required to be identified under Rule 23(e)(3).” FED. R. CIV. P.
4 23(e)(2)(C). All of those factors support approval.

5 *Cost, Risk, and Delay of Trial and Appeal.* As discussed above, the
6 Settlement provides excellent relief, particularly in light of the risks faced at trial,
7 the cost and delay of appeal, and uncertainty surrounding the administrative
8 distribution process. *See supra* Section I.A.1-2.

9 *Distribution Method.* The method for notifying the Class and distributing the
10 Settlement Fund to Settlement Class Members is simple, straightforward, and
11 equitable. Settlement Class Members will receive a *pro rata* distribution from the
12 remaining Net Settlement Fund, with those who received calls from CMI and iQor
13 receiving a double share. S.A. § 5.04. A Settlement Class Member need only
14 complete a simple claim form with his or her name, contact information, the
15 telephone number on which he or she received the allegedly unlawful calls, and a
16 certification that he or she was not a customer of DIRECTV at any time after
17 October 1, 2004. *Id.* at § 10.02. The claim process will ensure that claimants are
18 Settlement Class Members. Hutchinson Decl. ¶¶ 114-16. The claims process is also
19 consumer friendly, permitting paper or electronic claims. S.A. § 9.04. In addition, the
20 Settlement provides a robust notice plan centered on direct mail and email notice,
21 which satisfies Rule 23 and due process. *See infra* Section III.

22 The parties selected BrownGreer, PLC to oversee the notice and claims
23 process. S.A. § 2.10. BrownGreer has an excellent reputation in this field. *See In re*
24 *Actos (Pioglitazone) Prods. Liab. Litig.*, 274 F. Supp. 3d 485, 504 (W.D. La. 2017)
25 (“The parties selected the firm of BrownGreer PLC to be the Claims Administrator,
26 and by all accounts BrownGreer has done excellent, and outstanding work in that
27 role.”); Hutchinson Decl. ¶ 116. BrownGreer also served as a consulting expert for
28 Plaintiff during the potential claims administration briefing and thus is already up to

1 speed on the unique issues raised in identifying Settlement Class Members. *Id.*
2 *Attorneys' Fees*. Class Counsel intend to request an award of up to 33% of
3 the Settlement Fund, or \$5,610,000, in reasonable attorneys' fees, as well as
4 reimbursement for out-of-pocket costs. S.A. § 6.02. This amount—which was
5 negotiated only after the substantive terms of the Settlement were agreed upon—is
6 supported by the percentage-of-the-fund method that Ninth Circuit courts use to
7 determine fees and costs in common fund class action cases. *See, e.g., In re*
8 *Bluetooth*, 654 F.3d at 942. Plaintiff submits that 33% percent of the Settlement
9 Fund is reasonable in light of awards typically granted in TCPA class actions, the
10 extensive length of this case and resources/time devoted, and the result.¹⁰ *See, e.g.,*
11 *Dakota Med., Inc. v. RehabCare Grp., Inc.*, 2017 WL 4180497, at *8 (E.D. Cal.
12 Sept. 21, 2017) (approving 33% for TCPA settlement providing \$7.00 per fax to
13 each class member); *Hageman v. AT&T Mobility LLC*, 2015 WL 9855925, at *3
14 (D. Mont. Feb. 11, 2015) (same, where claimants received up to \$500 per call);
15 *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014)
16 (same, between \$175 and \$500 per fax). Further, the fact that the Settlement does
17 not make the Class's prospective and monetary relief dependent upon attorneys'
18 fees weighs in favor of the requested fees and costs. *See Tarlecki v. Bebe Stores,*
19 *Inc.*, 2009 WL 3720872, at *2 (N.D. Cal. Nov. 3, 2009) (“In common fund
20 settlements where the fees are deducted from the common fund, the approval of the
21 settlement agreement as a whole does not depend on the quantum of the fees.”).

22
23 ¹⁰ *See also Krakauer v. Dish Network, LLC*, 2018 WL 6305785, at *3 (M.D.N.C.
24 Dec. 3, 2018) (awarding 33% following TCPA trial and noting that other courts
25 have awarded similar amounts in cases that “necessarily required less work and risk
26 as well as lower recoveries”); *Jenkins v. Nat'l Grid USA Serv. Co.*, 2022 WL
27 2301668, at *5 (E.D.N.Y. June 24, 2022) (awarding 33% plus costs in TCPA
28 settlement); Brian Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in*
Class Actions, 89 FORDHAM L. REV. 1151, 1168 (2021) (“If judges want to be good
fiduciaries for absent class members, then they should probably presume that one-
third is the correct fixed percentage, not one-fourth.”).

1 Class Counsel will address their fee request in a separate motion, which will also
2 seek reimbursement for reasonable expenses.

3 *Rule 23(e)(3) Agreement.* As part of the Settlement, the Parties are also
4 resolving the claims of Carmen Montijo, the former class representative, who
5 received calls from DCI. S.A. § 6.05. The Court decertified DCI calls, while
6 preserving Ms. Montijo’s individual claims. *See* Dkt. 503 at 9. Ms. Montijo’s
7 settlement was not deducted from the Settlement Fund, nor was the Agreement
8 contingent on the resolution of Ms. Montijo’s claims. S.A. § 6.05. Rather, this
9 agreement simply reflects the parties’ efforts to resolve this action in its entirety. *Id.*
10 Courts have recognized that such agreements are acceptable. *See Perks v.*
11 *Activehours, Inc.*, 2021 WL 1146038, *6 (N.D. Cal. Mar. 25, 2021) (“Named
12 Plaintiffs disclosed in their motion for preliminary approval that a separate plaintiff
13 agreed to voluntarily dismiss his individual claims. This has no effect on the
14 Settlement Class and does not diminish the relief provided for them.”).

15 **4. The Settlement treats class members equitably.**

16 When considering whether a settlement “treats class members equitably
17 relative to each other,” FED. R. CIV. P. 23(e)(2)(D), courts seek “to ensure that
18 similarly situated class members are treated similarly and that dissimilarly situated
19 class members are not arbitrarily treated as if they were similarly situated,”
20 *Mandalevy v. BofI Holding, Inc.*, 2022 WL 156160, *9 (S.D. Cal. May 17, 2022)
21 (quoting 4 William Rubenstein, *Newberg on Class Actions* § 13:56 (5th ed. 2020)).
22 “Matters of concern could include whether the apportionment of relief among class
23 members takes appropriate account of differences among their claims, and whether
24 the scope of the release may affect class members in different ways that bear on the
25 apportionment of relief.” FED. R. CIV. P. 23, 2018 advisory committee note.

26 In this case, the Settlement recognizes that Class Members called by CMI or
27 iQor have stronger claims because the Court granted summary judgment as to
28 liability, Dkt. 401, and thus the Settlement affords them double the rate of recovery.

1 S.A. § 5.04. The Settlement is not inequitable because it provides some class
2 members more than others. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
3 461 (9th Cir. 2000) (approving settlement that left “a large portion of the class
4 without a recovery”). To the contrary, settlements must account for genuine
5 differences between the strength of class members’ claims. *See Kaupelis v. Harbor*
6 *Freight Tools*, 2021 WL 4816833, *11 (C.D. Cal. Aug. 11, 2021) (some class
7 members had “weaker claims,” so “[t]heir lesser relief [was] therefore justified and
8 equitable”); *Feltzs v. Cox Comms. Cal., LLC*, 2022 WL 2079144, at *11 (C.D. Cal.
9 Mar. 2, 2022) (distinction was “logical given the dramatically different likelihood
10 of success”) *Loreto v. Gen. Dynamics Info. Tech., Inc.*, 2021 WL 3141208 at *8
11 (S.D. Cal. July 26, 2018) (lesser payment justified by “obstacles” that led to
12 “low[er] likelihood of success”).

13 In addition, Class Counsel will seek Court approval of a service award of
14 \$10,000 for Ms. Brown. S.A. § 6.03. Although the service award (if approved)
15 would result in Ms. Brown being “treated differently,” that difference does not
16 offend Rule 23(e)(2)(D) because “[c]lass representative service awards are well-
17 established as legitimate in the Ninth Circuit.” *Ramirez v. Rite Aid Corp.*, 2022 U.S.
18 Dist. LEXIS 109069, *21 (C.D. Cal. May 3, 2022). A service award of \$10,000 is
19 consistent with awards approved by federal courts in California. *See, e.g., In re*
20 *NCAA*, 2017 WL 6040065, at *11 (N.D. Cal. Dec. 6, 2017) (awarding \$20,000
21 incentive awards to each class representative and collecting cases approving similar
22 awards); 4 William Rubenstein, *Newberg and Rubenstein on Class Actions* § 17:8
23 (6th ed. 2022) (one study found, as of end of 2021, mean service award of
24 \$14,371). As detailed in the Declaration of Jenny Brown, she served dutifully in her
25 role as named plaintiff by providing discovery, sitting for a deposition, keeping
26 apprised of the case, and preparing to be a trial witness. Brown Decl. ¶ 4.

27 **II. The Court should amend the class definition for purposes of settlement.**

28 A class has already been certified. *See* Dkts. 275 (certifying the class), 300

1 (joint class definition); 503 (amending class definition). The Settlement seeks to
2 settle the claims of the class as currently defined in the Court’s most recent order.
3 Dkt. 503. The Parties propose to add a qualification so that the Settlement Class
4 consists only of those individuals “associated with the telephone numbers and calls
5 during the Settlement Class Period in Plaintiff’s summary judgment motions.” *See*
6 *Dkts. 375-1 (CMI), 375-2 (iQor), 415-6 (AFNI), and 415-7 (ERC)*. These
7 individuals received calls coded with a wrong number, as identified by Plaintiff’s
8 expert and presented to the Court in connection with Plaintiff’s summary judgment
9 motions. This makes clear that the Settlement releases only the calls that were and
10 would be before the Court at summary judgment and/or trial.

11 “Rule 23 provides district courts with broad authority at various stages in the
12 litigation to revisit class certification determinations and to redefine or decertify
13 classes as appropriate.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 546 (9th
14 Cir. 2013). Where the amendment to the class definition is made in the context of
15 settlement on behalf of a previously certified class, and the amendments “would not
16 change any of the Court’s prior conclusions concerning the Rule 23 requirements,”
17 such amendments are generally proper. *Wallace v. Countrywide Home Loans, Inc.*,
18 2014 WL 12691582, at *4 (C.D. Cal. July 2, 2014). Moreover, Courts freely
19 approve changes to the class definition that, like here, narrow the scope of the
20 previous class definition. *McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142,
21 161-62 (S.D. Cal. 2019).

22 The Parties’ proposed change to the class definition is largely clarifying as
23 opposed to substantive, making clear that the Settlement covers only the calls that
24 have been previously before the Court. Insofar as the amendment changes the scope
25 of the class, it necessarily narrows the class by adding additional qualifications on
26 class membership. Thus, the Court should approve the amendment.

27 **III. The notice plan complies with Rule 23(e)(1) and due process.**

28 Rule 23(e)(1) states that “[t]he court must direct notice in a reasonable

1 manner to all class members who would be bound by the proposal if giving notice
2 is justified by the parties' showing that the court will likely be able to: (i) approve
3 the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment
4 on the proposal." FED. R. CIV. P. 23(e)(1). Class members are entitled to the "best
5 notice that is practicable under the circumstances" of any proposed settlement
6 before it is finally approved by the Court. FED. R. CIV. P. 23(c)(2)(B). "The notice
7 may be by one or more of the following: United States mail, electronic means, or
8 other appropriate means." *Id.* Due process requires "the best notice practicable
9 under the circumstances, including individual notice to all members who can be
10 identified through reasonable effort." *Amchem Prods. v. Windsor*, 521 U.S. 591,
11 617 (1997). Notice must state in plain, easily understood language: (i) the nature of
12 the action; (ii) the definition of the class certified; (iii) the class claims, issues, or
13 defenses; (iv) that a class member may enter an appearance through an attorney if
14 the member so desires; (v) that the court will exclude from the class any member
15 who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii)
16 the binding effect of a class judgment on members under Rule 23(c)(3). FED. R.
17 Civ. P. 23(c)(2)(B).

18 This Settlement provides for a Notice Plan that will include direct mail and
19 email notice to all identifiable Settlement Class Members. *See* S.A. §§ 9.01-05. In
20 addition, the Settlement Administrator will maintain a Settlement Website with
21 detailed information about the Settlement, *id.* § 9.04, and a toll-free number that
22 anyone may call to obtain information about how to submit a claim. *Id.* § 9.05.

23 All of the notices, attached as Exhibit C to the Settlement Agreement, are
24 drafted in plain English, with Spanish versions available on the Settlement Website,
25 so they will be easy to understand. They include key information about the
26 Settlement, including the deadline to file a claim, the deadline to request exclusion
27 or object to the Settlement, and the date of the Final Approval Hearing (and that the
28 hearing date may change without further notice). The notices state the amount of

1 the fee award Class Counsel will request, the amount of the Incentive Award
2 Plaintiff will request, and an estimate of the cash payment Settlement Class
3 Members will receive if they do not request exclusion. The notices disclose that, by
4 participating in the Settlement, Settlement Class Members give up the right to sue
5 to receive between \$500 and \$1,500 per call. They direct Settlement Class
6 Members to the Settlement Website for further information about copies of the
7 notices, Settlement Agreement, and key settlement motions. S.A. § 9.04.

8 Settlement Class Members will have ninety (90) days from the Settlement
9 Notice Date to submit a claim, and sixty (60) days from the Settlement Notice Date
10 to object to, or request exclusion from, the Settlement. *Id.* §§ 2.09, 2.25-26. The
11 Settlement Administrator will post Class Counsel’s motion for attorneys’ fees on
12 the Settlement Website at least thirty days before the deadline to object in
13 accordance with *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir.
14 2010). S.A. § 9.04.

15 The manner and content of the proposed Notice Plan complies with Rule 23
16 and due process. *Torrison v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374-75 (9th Cir.
17 1993). Similar notice plans are commonly used in class actions like this one and
18 constitute the best notice practicable under the circumstances. *See, e.g., Loreto*,
19 2021 WL 3141208, *10-11 (approving notice plan of mailing notice form to
20 individuals identified in defendant’s records); *Malta v. Fed. Home Loan Mortg.*
21 *Corp.*, 2013 WL 444619, *11 (S.D. Cal. Feb. 5, 2013) (approving notice plan in
22 TCPA case providing direct notice to identifiable class members).

23 CONCLUSION

24 For the foregoing reasons, Plaintiff respectfully requests that the Court enter
25 an order that (i) amends the proposed Settlement Class for settlement purposes
26 only; (ii) preliminarily approves the Settlement; (iii) directs notice to the Settlement
27 Class; and (iv) sets a date for the Fairness Hearing and related deadlines.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: July 29, 2022

Respectfully submitted,

By: /s/ Daniel M. Hutchinson
Daniel M. Hutchinson

LIEFF CABRASER, HEIMANN &
BERNSTEIN, LLP

Jonathan D. Selbin (SBN 170222)
jselbin@lchb.com

Douglas I. Cuthbertson
(admitted *pro hac vice*)
dcuthbertson@lchb.com

Sean A. Petterson
(admitted *pro hac vice*)
spetterson@lchb.com

250 Hudson Street, 8th Floor
New York, NY 10013

Telephone: (212) 355-9500
Facsimile: (212) 355-9592

LIEFF CABRASER, HEIMANN &
BERNSTEIN, LLP

Daniel M. Hutchinson (SBN 239458)
dhutchinson@lchb.com

275 Battery Street, 29th Floor
San Francisco, CA 94111-3339

Telephone: (415) 956-1000
Facsimile: (415) 956-1008

BURKE LAW OFFICES, LLC

Alexander H. Burke (admitted *pro hac vice*)
ABurke@BurkeLawLLC.com

909 Davis Street, Suite 500
Evanston, IL 60201

Telephone: (312) 729-5288

MEYER WILSON CO., LPA

Matthew R. Wilson (SBN 290473)
mwilson@meyerwilson.com

Michael J. Boyle, Jr. (SBN 258560)
mboyle@meyerwilson.com

Jared W. Connors (admitted *pro hac vice*)
jconnors@meyerwilson.com

305 W. Nationwide Blvd
Columbus, OH 43215

Telephone: (614) 224-6000
Facsimile: (614) 224-6066

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KING & SIEGEL LLP
Elliot Siegel (286798)
Elliot@kingsiegel.com
724 South Spring St. Suite 201
Los Angeles, CA 90014
Telephone: (213) 465-4802
Facsimile: (213) 465-4803

HEALEY LAW, LLC
Robert T. Healey (admitted *pro hac vice*)
bob@healeylawllc.com
640 Cepi Drive, Suite A
Chesterfield, MO 63005
Telephone: (636) 536-5175
Facsimile: (636) 590-2882

Attorneys for Plaintiff Jenny Brown and the Class