IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

SUSAN DRAZEN, on behalf of herself and other persons similarly situated, **Plaintiffs,** **v.** **GODADDY.COM, LLC, a Delaware Limited Liability Company,** **Defendant.**	**Civil Action: 1:19-00563-KD-B**
JASON BENNETT on behalf of himself and other persons similarly situated, **Plaintiffs,** **v.** **GODADDY.COM, LLC, a Delaware Limited Liability Company,** **Defendant.**	**Civil Action: 1:20-00094-KD-B**

PLAINTIFFS' MOTION & MEMORANDUM IN SUPPORT OF AWARD OF ATTORNEYS' FEES, COSTS, AND EXPENSES, AND FOR SERVICE AWARDS

Dated: July 24, 2020

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I. INTRODUCTION

After more than three years of litigation and almost a full year of arms-length and often contentious negotiations, the Class Action Settlement that Class Counsel has achieved in this case is an exceptional result for the Settlement Class members.[1] The Settlement Agreement negotiated by Class Counsel provides $35 million in benefits to over 1.26 million Settlement Class members, with each Settlement Class member who files a valid, timely claim entitled to their choice of either a $150.00 Voucher Award to use as good as cash for any GoDaddy products or services, or $35.00 cash, for having received phone calls or text messages alleged to have been in violation of the federal Telephone Consumer Protection Act (the "TCPA"), 47 U.S.C. §227 *et seq*.

Notice of the Settlement – including the details of the fee award requested herein – commenced on July 9, 2020, with the Settlement Administrator sending Notice to over 1.26 million potential Settlement Class members. As of the filing of this Motion over 15,600 claims have already been submitted. Importantly, despite the extraordinary size of the Settlement Class, no Settlement Class members have objected to the proposed Settlement, and only three Settlement Class members elected to exclude themselves from the Settlement.

With this Motion, Class Counsel request a fee of 30% of the total amount of settlement benefits made available to the Settlement Class, amounting to $10,500,000, as well as the customarily-awarded expenses and costs incurred of $105,410.51. As explained in detail below, Class Counsel's request for attorneys' fees, expenses, and costs, as well as the modest service awards requested for the lead Plaintiffs, is: amply justified in light of the investment, risks, and exceptional relief provided under the Settlement Agreement; well within the range found to be

[1] Unless otherwise stated, capitalized terms have the same meaning as those terms are used in the Second Amended Class Action Settlement Agreement ("Settlement Agreement"), attached hereto as Exhibit A.

reasonable by the Eleventh Circuit; and consistent with awards approved in similar consumer class actions, including numerous TCPA class settlements. Further, the requested fee is also well supported by a cross-check to Class Counsel's lodestar, which reflects the extraordinary amount of effort that this litigation required before the Parties reached the Settlement Agreement.

Both Class Counsel and the lead Plaintiffs devoted significant time and effort to the prosecution of the Settlement Class members' claims, and their efforts have yielded an extraordinary benefit for over a million consumers nationwide. The requested attorneys' fees, expenses, and costs and service awards are amply justified in light of the excellent results obtained for the Settlement Class members, and Plaintiffs and Class Counsel respectfully request that the Court approve attorneys' fees, costs, and expenses of $10,605,410.51, and the agreed-upon service awards of $5,000.00 for each of the lead Plaintiffs.

II. BACKGROUND

A. Nature of the Claims and Procedural History.

The initial Complaint in this litigation was filed by Plaintiff Bennett in the Southern District of Alabama on June 20, 2016. Plaintiff Bennett alleged that he received numerous automated calls on his cellular telephone from GoDaddy attempting to get Plaintiff to renew services that he had previously purchased but which had expired. *See Bennett v. GoDaddy.com, LLC*, No. 16-cv-03908 (D. Ariz.) (the "*Bennett* Litigation"), Dkt. No. 1, at ¶¶ 12, 14–15. Bennett further alleged that GoDaddy failed to obtain his written consent to place such telemarketing calls. *Id.* at ¶ 17. As such, Bennett alleged the calls he received were unauthorized and in violation of the TCPA. *Id.* at ¶¶ 19, 46. The case was subsequently transferred to the U.S. District Court for the District of Arizona, and on January 27, 2017, GoDaddy filed its amended Answer to Plaintiff Bennett's Complaint. *See* No. 16-cv-03908, Dkt. No. 37.

Following GoDaddy's Answer, Plaintiff Bennett engaged in extensive discovery practice, seeking information regarding the equipment GoDaddy used to place the calls at issue, as well as information regarding GoDaddy's efforts to obtain consent to place the calls at issue. Bennett also pursued issues pertaining to class discovery, such as the identities of the individuals who received calls from GoDaddy that were alleged to have been unauthorized telemarketing calls. In addition to written discovery, the Parties participated in numerous fact and expert depositions. Thanks to Plaintiff Bennett's efforts in pursuing discovery, on July 27, 2018, Plaintiff Bennett was able to move for class certification. No. 16-cv-03908, Dkt. No. 111. Plaintiff Bennett sought to certify a class of individuals who had received calls to their cellular telephones from GoDaddy pursuant to two specific call campaigns. *Id.* at 3:24–26. On March 15, 2019, following full briefing on his motion for class certification and almost three years after initially filing suit, the court in the District of Arizona granted Plaintiff Bennett's motion for class certification. No. 16-cv-03908, Dkt. 131. However, faced with the prospect of a fully certified class, GoDaddy proceeded to challenge the District Court's ruling and filed a petition to the Ninth Circuit pursuant to Fed. R. Civ. P. 23(f). No. 16-cv-03908, Dkt. No. 136. Following full briefing, Plaintiff Bennett persisted, with the Ninth Circuit denying the petition. *See Bennett v. GoDaddy.com, LLC*, No. 19-80037, Dkt. No. 136 (9th Cir. April 2, 2019).

At the same time that Plaintiff Bennett's action was being litigated, Plaintiff Herrick was also proceeding with his claims against GoDaddy in the District of Arizona. On January 28, 2016, Herrick filed his Class Action Complaint against GoDaddy in the District of Arizona alleging that he received text message advertising on his cellular telephone from GoDaddy containing promotional offers without his prior express written consent. *See Herrick v. GoDaddy.com, LLC*, No. 16-cv-00254 (D. Ariz.) (the "*Herrick* Litigation"), Dkt. No. 1, at ¶¶ 23, 25, 26. On August 30,

2016, following the Supreme Court's decision in *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540 (2016), GoDaddy filed its Motion to Dismiss Plaintiff Herrick's Complaint for lack of subject matter jurisdiction. *See* No. 16-cv-00254, Dkt. No. 31. Following full briefing on the motion and supplemental submissions by the Parties, the court in the *Herrick* Litigation denied the motion to dismiss without prejudice to renew. While GoDaddy subsequently renewed its motion to dismiss (*see* No. 16-cv-00254, Dkt. No. 66), it ultimately withdrew the motion without prejudice on February 1, 2017. *See* No. 16-cv-00254, Dkt. No. 67.

Contemporaneous with defending against GoDaddy's motion practice, Plaintiff Herrick proceeded with substantial discovery, obtaining written discovery and documents and taking multiple depositions. It was in light of Plaintiff Herrick's discovery efforts that on March 31, 2017, GoDaddy filed a motion for summary judgment on the issue of whether the equipment used to send the text message advertising was an Automated Telephone Dialing System ("ATDS") under the TCPA. *See* No. 16-cv-00254, Dkt. No. 79. Following full briefing on the motion, the court in the District of Arizona granted GoDaddy's motion for summary judgment on May 14, 2018. No. 16-cv-00254, Dkt. No. 107. However, Plaintiff Herrick appealed this ruling to the Ninth Circuit Court of Appeals, which the Parties fully briefed. *See Herrick v. GoDaddy.com, LLC*, No. 18-16048 (9th Cir.). It was only pursuant to the Parties' joint motion to stay the appeal pending final approval of the Settlement Agreement before this Court that, on December 18, 2019, the Ninth Circuit stayed the appeal. *See* No. 18-16048, at Dkt. No. 45.

On August 21, 2019, in the midst of the lawsuits being prosecuted by Plaintiffs Bennett and Herrick, Plaintiff Drazen filed her original Class Action Complaint against GoDaddy before this Court. Dkt. No. 1. Similar to Plaintiffs Bennett and Herrick, Plaintiff Drazen also alleged that GoDaddy made automated promotional calls and text messages without valid consent and in

violation of the TCPA. Dkt. No. 1, at ¶¶ 7, 9, 18. As a recipient of both forms of telemarketing, Plaintiff Drazen was in a unique position to proceed against GoDaddy on behalf of all individuals who potentially suffered a TCPA violation.

B. Settlement Negotiations.

Throughout the course of the *Bennett* Litigation, Bennett and GoDaddy periodically engaged in informal settlement discussions. These discussions ultimately led Bennett and GoDaddy to participate in a full-day mediation before the Honorable Wayne Andersen (Ret.) of JAMS Chicago – a former District Court Judge in the Northern District of Illinois – in June 2019. The Parties' negotiations at the mediation were hard fought and at arms-length, stretching well into the evening. The Parties were ultimately able to confirm the general terms of a class settlement on June 17, 2019. Over the course of the next three months, the Parties worked diligently to reduce these general terms to a final, fully executed settlement agreement. These negotiations involved innumerable conversations among the Parties, including multiple follow-up calls with Judge Andersen, during which the Parties sought guidance on the resolution of questions and disputes regarding the settlement terms. Furthermore, after the *Drazen* Litigation was filed, the Parties agreed to involve that action in a global resolution of the claims at issue. In September 2019, Bennett, Drazen, GoDaddy, and their respective counsel entered into the original settlement agreement. In December 2019, the Parties amended the settlement to formally include Herrick as a Plaintiff in this settlement and to include his counsel as Class Counsel for the Settlement Class in light of the substantial discovery and significant risk being placed on GoDaddy as a result of the *Herrick* Litigation.

After the Parties entered into their Agreement, Plaintiff Bennett and GoDaddy sought formal transfer and consolidation of the *Bennett* Litigation, which this Court granted on February

21, 2020. Dkt. No. 29. Subsequently, the Parties engaged in extensive additional negotiations and discussions pursuant to the Court's February 21, 2020 Order seeking clarification following the Parties' initial filing of their Motion for Preliminary Approval. Dkt. Nos. 20, 30, 44. These discussions, and the multiple hearings and submissions before this Court, ultimately culminated in the Parties executing the Second Amended Settlement Agreement that this Court preliminarily approved on June 9, 2020. Dkt. No. 49.

Since the Court's Order preliminarily approving the Parties' Settlement Agreement, the Parties have worked to finalize the Settlement Website, the forms of notice, and telephone scripts for individuals calling to inquire about the settlement, and also the production of the Contact Information Records for the Settlement Class members. Pursuant to the Court's preliminary approval Order, Notice has been effectuated, and direct email notice was sent out to over 1.26 million Settlement Class members beginning on July 9, 2020. *See* Declaration of Myles McGuire, attached hereto as Exhibit B, at ¶ 21. In addition, the Settlement Website and the automated telephone inquiry system were also launched on July 9, 2020. *See Id*. As of the date of this filing, over 15,600 Settlement Class members have submitted claims, with only three class members having filed any requests for exclusion and no class members in any way objecting to the Settlement. *Id.*

C. The Settlement.

The Settlement Agreement provides for thirty-five million dollars ($35,000,000.00) in compensation made available to Settlement Class members. Ex. A, at ¶ 50. Settlement Class members who submit an approved Claim and elect to receive a Cash Award will receive a check in the amount of thirty-five dollars ($35.00), subject to *pro rata* reduction. Ex. A, at ¶ 51(a). In the alternative, each Settlement Class member who submits an approved Claim and elects to receive

a Voucher Award will receive a voucher in the amount of one hundred fifty dollars ($150.00), subject to *pro rata* reduction. Ex. A, at ¶ 51(b). The Voucher Award will be redeemable online at GoDaddy's website or over the telephone, and will be fully transferrable, good on all products and services offered by GoDaddy, and will require no minimum purchase. Ex. A, at ¶ 51(b). While the total payment to each Settlement Class member will depend on the number of valid Claim forms submitted, based on an estimate of the number of claims expected in response to the Notice Program, Plaintiffs anticipate that each Settlement Class member who submits a timely, valid claim will receive either the full $35.00 Cash Award or the full $150.00 Voucher Award.

III. ARGUMENT

The Settlement provides for $35 million in benefits to the Settlement Class members. In the Eleventh Circuit it is well established that class counsel who achieve a collective benefit for the class are entitled to appropriate fees for their services in obtaining such benefit that is a "reasonable percentage of the fund." *Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *see also Poertner v. Gillette Co.*, 618 F. App'x 624, 628 (11th Cir. 2015);[2] *cert.*

[2] *Poertner* confirmed that the percentage awarded is of the total benefits made available irrespective of the number of claims filed by class members. *Poertner*, 618 F. App'x at 629, n. 2 ("'[a] claims-made settlement is . . . the functional equivalent of a common fund settlement . . . indeed, the two types of settlements are 'fully synonymous'"), *citing* 4 William B. Rubenstein, *Newberg on Class Actions* § 13:7 (5th ed. 2011); *see also Hall v. Bank of Am., N.A.*, No. 12-cv-22700, 2014 WL 7184039, at *9 (S.D. Fla. Dec. 17, 2014); *Montoya v. PNC Bank, N.A.*, No. 14-cv-20474,2016 WL 1529902, at *23 (S.D. Fla. Apr. 14, 2016) ("the valuation of counsel's fee should be based on the opportunity created for the Settlement Class . . . [a]nd counsel should not be penalized for class members' failure to take advantage of such a settlement"); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (upholding an attorney fee award based on the entire settlement fund, even though a portion reverted to the defendant); *Stahl v. Mastec, Inc.*, No. 05-cv-1265, 2008 WL 2267469, at *1 (M.D. Fla. May 20, 2008) (awarding 28.8% of the total available fund and noting that "the Supreme Court and the Eleventh Circuit have held that it is appropriate that the attorney's fees be awarded on the entire Maximum Gross Settlement Amount"); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1342 (S.D. Fla. 2007) (approving award of 30% of the maximum amount available to the class and noting that "[t]he percentage applies to the total fund created, even where the actual payout following the claims process is lower").

denied sub nom, *Frank v. Poertner*, 136 S. Ct. 1453 (2016); *Waters*, 190 F.3d sat 1293; *Eslava v. Gulf Tel. Co.*, No. 04-cv-0297, 2007 WL 4105977, at *1 (S.D. Ala. Nov. 16, 2007). As explained in detail below, a fee award of 30% of the benefits made available to the Settlement Class is fully warranted under established Eleventh Circuit precedent and is well in line with fee awards in a number of other TCPA settlements in this Circuit. Further, the requested fee award is well supported by Class Counsel's significant lodestar as a result of the extensive scope of the litigation and efforts needed to achieve the substantial Settlement benefits being provided.

A. The Requested Fee Award Is Reasonable As A Percentage Of The Total Settlement Benefits Made Available.

In *Camden I*, the Eleventh Circuit held that common fund fee awards range from 20% to as much as 50% of the total benefits, with most awards falling between 20% and 30%. *Camden I*, 946 F.2d at 774; *see also Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1242 (11th Cir. 2011); *Waters*, 190 F.3d at 1294–95. Indeed, the 30% fee award sought by Class Counsel here is well within the range of fee awards in common fund settlements in this Circuit, including numerous TCPA settlements. *See, e.g.*, *Comeens v. HM Operating, Inc.*, No. 14-cv-00521, 2016 WL 4398412, at *4 (N.D. Ala. Aug. 18, 2016) (approving 33 1/3% fee award); *Waters*, 190 F.3d at 1295–96 (affirming fee award of 33 1/3% of a $40 million settlement); *Cabot E. Broward 2 LLC v. Cabot*, No. 16-cv-61218, 2018 WL 5905415, at **7–8 (S.D. Fla. Nov. 9, 2018) (citing "19 cases from this Circuit in which attorneys' fees amounting to 33% or more of a settlement fund were awarded," including settlements of $310 million, $77.5 million, $75 million, $40 million, and $25 million); *Waters v. Cook's Pest Control, Inc.*, No. 07-cv-00394, 2012 WL 2923542 (N.D. Ala. July 17, 2012) (35% fee award approved); *Eslava*, 2007 WL 4105977 (30%); *James v. JPMorgan Chase Bank, N.A.*, No. 15-cv-2424, 2017 WL 2472499, at *2 (M.D. Fla. June 5, 2017) (awarding attorneys' fees amounting to 30% of the settlement fund in TCPA class action); *Gonzalez v. TCR*

Sports Broad. Holding, LLP, No. 18-cv-20048, 2019 WL 2249941, at *6 (S.D. Fla. May 24, 2019) (collecting authorities and noting "district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund"); *Schwyhart v. AmSher Collection Servs., Inc.*, No. 15-cv-01175, 2017 WL 1034201, at *3 (N.D. Ala. Mar. 16, 2017) (finding award of attorneys' fees of "one-third of the Settlement Fund" to be "fair and reasonable" in TCPA class action).

Importantly, the reasonableness of the fee award sought is also supported by the twelve "*Johnson* factors" that courts within the Eleventh Circuit commonly look to under *Johnson v. Georgia Highway Expr., Inc.*, 488 F.2d 714 (5th Cir. 1974); *see Camden I*, 946 F.2d at 775. The "*Johnson* factors" are: (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; (5) the customary fee; (6) whether the fee is contingent; (7) the time limitations imposed; (8) the amount involved and 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. *Camden I*, 946 F.2d at 772. Here, as explained below, each of these factors confirms the reasonableness of Class Counsel's requested fee award.

1. The time and labor required and preclusion from other work.

The first, fourth, and seventh *Johnson* factors relating to the time and labor Class Counsel have dedicated to the prosecution of these Actions, as well as the time they necessarily had to devote to the litigation to the exception of pursuing other matters, all support the reasonableness of the fee award requested.

As set forth further in Section III.B, below, and as attested to in the Declarations of Class Counsel attached hereto, Class Counsel have expended thousands of hours litigating this matter over the past four years to achieve the Settlement before the Court here. Throughout this litigation, which has proceeded in multiple forums, Class Counsel have conducted extensive investigations, briefed numerous dispositive motions, conducted multiple depositions, reviewed thousands of pages of document production, fully briefed two separate appeals to the Ninth Circuit, and were even successful in adversely certifying a class of affected individuals. *See* McGuire Decl., at ¶ 11; Declaration of John Cox, attached hereto as Exhibit C, at ¶¶ 11–12; Declaration of Earl P. Underwood, attached hereto as Exhibit D, at ¶¶ 12–13; and Declaration of Phillip A. Bock, attached hereto as Exhibit E, at ¶ 11. Critically, Class Counsel undertook these efforts without any guarantee of recovery and necessarily had to forego prosecution of other cases and pursuing other matters. *See* McGuire Decl., at ¶¶ 10, 14; Cox Decl., at ¶¶ 7 ,15; Bock Decl., at ¶ 10; *see Yates v. Mobile Cnty. Pers. Bd.*, 719 F.2d 1530, 1535 (11th Cir. 1983) ("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"). In total, Class Counsel have spent over 5,423.2 hours in attorney time in litigating these Actions, amounting to a lodestar of $2,800,053.00 million. *See* McGuire Decl., at ¶¶ 11, 18; Cox Decl., at ¶¶ 11–13; Underwood Decl., at ¶¶ 12–14; Bock Decl., at ¶¶ 11, 19. Class Counsel also anticipate that they will have to expend an additional 80–160 hours following the filing of this Motion responding to Settlement Class members' questions, ensuring that the Notice program is fully and properly implemented, moving for final approval, and responding to any potential objection or accompanying appeal. McGuire Decl., at ¶ 19; Cox Decl., at ¶ 17; Underwood Decl., at ¶ 14.

Even though courts in this Circuit regularly award fees based on a percentage of the fund under *Camden 1* without any consideration of lodestar (*see, e.g., David v. American Suzuki Motor Corp.*, No. 08-cv-22278, 2010 WL 1628362 (S.D. Fla. Apr. 15, 2010); *Fabricant v. Sears Roebuck & Co.*, No. 98-cv-1281, 2002 WL 34477904 (S.D. Fla. Sept. 18, 2002)), such a lodestar "cross-check" fully supports the requested fee in this case. Here, a multiplier of 3.69 is well within the range of multipliers approved when cross-checking the total amount of funds made available to class members. *See In re Progressive Ins. Corp. Underwriting & Rating Practices Litig.*, No. 03-cv-01519, 2008 WL 11348505, at *7 (N.D. Fla. Oct. 1, 2008) (collecting authorities and noting that "the range of multiplies in large and complicated class actions runs from a low of 2.26 . . . to a high of 4.5"); *Pinto*, 513 F. Supp. 2d at 1344 (collecting authorities and stating that "[i]n many cases, including cases in this jurisdiction, multiples much higher than three have been approved").

2. The litigation involved significant legal challenges that created a high risk that the Actions would not succeed and result in any payment to Class Counsel or Settlement Class members.

The second, sixth, and tenth *Johnson* factors also favor approval of the requested fee award. As noted above, the Actions that resulted in the Settlement Agreement ultimately achieved by Class Counsel involved some highly complex legal issues. Specifically, during the entire pendency of the *Herrick*, *Bennett*, and *Drazen* Litigations, the question of whether the dialing technology used by GoDaddy to send the text messages and place the calls at issue constituted an ATDS under the TCPA was contested and subject to conflicting rulings. *See Glasser v. Hilton Grand Vacations Co., LLC*, 948 F.3d 1301 (11th Cir. 2020), *versus Marks v. Crunch San Diego, LLC*, 904 F.3d 1041 (9th Cir. 2018). Indeed, this was the very issue that was the subject of the motion for summary judgment and subsequent appeal to the Ninth Circuit in the *Herrick* Litigation, and, most recently, has been granted *certiorari* by the United States Supreme Court to resolve the circuit split on the

issue. *See Facebook, Inc. v. Duguid*, No. 19-511, 2020 WL 3865252 (U.S. July 9, 2020). That is, the issue of what constitutes an ATDS is now subject to Supreme Court review, with the potential for a ruling strongly adverse to Plaintiffs and the putative Class members that would be dispositive in this case. As a result, had this Settlement not been reached when it was reached it is entirely possible that the Actions would have been stayed in their entirety pending the Supreme Court's ruling in *Facebook*, with the Settlement Class members receiving no benefits whatsoever.

Further, as was briefed in the *Bennett* Litigation and subsequently raised by the Court following the Parties' submission of their Motion for Preliminary Approval (Dkt. No. 30), there is also a circuit split regarding whether certain TCPA violations constitute an injury-in-fact that confers Article III standing. *See Salcedo v. Hanna*, 936 F.3d 1162 (11th Cir. 2019), *versus Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037 (9th Cir. 2017). This very issue was extensively discussed by the Court in its Order granting preliminary approval (Dkt. 49) and, if litigated, could have resulted in some Settlement Class members receiving no benefits whatsoever.

Additionally, the issue of whether the calls and text messages at issue constituted "advertising" or "telemarketing" also remained a threshold merits issue that was still to be ruled upon. Under FCC regulations passed in 2012, automated text messages and phone calls made for purposes of advertising require express written consent. *See In re Rules and Regulations Implementing Tel. Consumer Prot. Act of 1991*, 27 F.C.C. Rad. 1830, 1857 (February 15, 2012). At trial, GoDaddy would have likely challenged the purpose behind the calls and text messages that were placed and argued that they were not made for advertising purposes. If the trier of fact determined that the calls did not constitute advertising or telemarketing, then express written consent would not be required. Rather, the TCPA would only require "express consent," which is a much lower threshold that GoDaddy could meet to defeat the claims at issue here.

The difficulty in litigating a case of this size in a changing legal landscape with class members scattered across the country and involving a defendant that is well capitalized and prepared to litigate any decision to appeal is why, despite over 1 million Settlement Class members receiving the calls and text messages at issue, only three lawsuits were ultimately brought against GoDaddy. This factor, along with the significant risk to achieving any recovery, combined with the already contingent nature of Class Counsel's involvement in this litigation, weighs heavily in favor of finding Class Counsel's requested award reasonable. *See Pinto*, 513 F. Supp. 2d at 1339 ("A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high"); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1364 (S.D. Fla. 2011) ("A contingency fee arrangement often justifies an increase in the award of attorney's fees"); *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-cv-61677, 2008 WL 649124, at *14 (S.D. Fla. Jan. 31, 2008) ("Attorneys' risk is perhaps the foremost factor in determining an appropriate fee award").

3. Class Counsel have achieved an excellent result for the Settlement Class.

The eighth *Johnson* factor, the value provided to the Settlement Class through Class Counsel's efforts, is the centerpiece of any determination of a reasonable fee. *See Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1202 (S.D. Fla. 2006). Here, Class Counsel were able to negotiate a settlement that provides for $35 million in benefits to the Settlement Class, providing Settlement Class members with the option of receiving up to $150.00 in GoDaddy credit or $35.00 in cash. Importantly, the Settlement Class members are all current or former GoDaddy customers. As a result, not only is the sheer amount of settlement benefits being made available significant, but the $150.00 Voucher Award is directly beneficial to the vast majority of the

Settlement Class members who currently or have recently used GoDaddy products and services. At the same time, the Settlement also provides Class members with the option to obtain a valuable $35.00 cash benefit.[3] In short, the benefits being provided to the Settlement Class are well within the range of benefits provided by other TCPA settlements in this Circuit, and elsewhere throughout the country. *See, e.g.*, *Spillman v. RPM Pizza, Inc.*, No. 10-cv-349, 2013 WL 2286076, at *4 (M.D. La., June 17, 2011) (approving a settlement creating a $9.75 million fund for unauthorized automated calls, resulting in a settlement payment of approximately $15 per class member); *Los Santos v. Millward Brown, Inc.*, No. 13-cv-80670, 2015 WL 11438497 (S.D. Fla. Sept. 11, 2015) (approving a settlement creating a $11 million fund for unauthorized automated calls resulting in a settlement payment of $50 per class member); *Rose et al. v. Bank of America Corp*., No. 11-cv-02390 (N.D. Cal. 2014) (approving settlement creating a $32 million fund for unauthorized automated calls, resulting in a settlement payment of approximately $20–$40 per class member); *In re Jiffy Lube Int'l, Inc. Text Spam Litig.*, No. 11-MD-02261 (S.D. Cal. 2013) (approving settlement providing class members with $20 vouchers that could be redeemed for $15 cash); *Garcia v. Target Corp.*, No. 16-cv-02574, Dkt. 210 (D. Minn. Jan. 27, 2020) (approving a settlement creating a $7.05 million fund for unauthorized automated calls providing for a settlement payment of $70 per class member); *Williams v. Bluestem Brands, Inc.*, No. 17-cv-1971, 2019 WL 1450090, at *2 (M.D. Fla. Apr. 2, 2019) (approving TCPA settlement resulting in approximately $25–$75 per claimant). Accordingly, this factor also weighs heavily in favor of finding the requested fee award reasonable.

[3] Because of the nature and value of the Voucher Award, as well as the fact that the $35.00 Cash Award is being made available to all 1.26 million Settlement Class members, the full $35 million in settlement benefits is being made available to the Settlement Class.

4. The requested fee award is consistent with fee awards approved in other TCPA cases.

The fifth and twelfth *Johnson* factors are also satisfied here, as the fee award requested by Class Counsel is consistent with fee awards approved by numerous other courts in TCPA class actions across the country, including in this Circuit. As the Eleventh Circuit in *Camden I* noted, typical fee awards in this Circuit range from 20% to 50% of the total benefits made available, with most awards falling between 20% and 30%. *Camden I*, 946 F.2d at 774; *see also David*, 2010 WL 1628362, at *8 n. 15 (noting that a customary fee award is "20%–50% of the common fund's value"). Class Counsel's fee request of just 30% of the total benefits made available is well within that customary range. Indeed, numerous courts have approved similar such fee awards. *See, e.g.*, *James*, 2017 WL 2472499, at *2 (awarding attorneys' fees amounting to 30% of the settlement fund where class counsel "litigat[ed] a large class action" brought under the TCPA); *Gonzalez*, 2019 WL 2249941, at *6 (collecting authorities and noting "district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund"); *Schwyhart*, 2017 WL 1034201, at *3 (finding award of attorneys' fees of "one-third of the Settlement Fund" to be "fair and reasonable" in TCPA class action); *Markos v. Wells Fargo Bank, N.A.*, No. 15-cv-01156, 2017 WL 416425, at *3 (N.D. Ga. Jan. 30, 2017) (awarding $4.9 million, or 30% of settlement fund, in TCPA class action); *Youngman v. A&B Ins. & Fin., Inc.*, No. 16-cv-01478, Dkt. No. 70 (M.D. Fla. July 31, 2018) (awarding a fee of 33 1/3% in TCPA class action); *Soto v. The Gallup Org.*, No. 13-cv-61747, Dkt. No. 95 (S.D. Fla. Nov. 24, 2015) (awarding 33 1/3% in TCPA class action action); *Guarisma v. ADCAHB Med. Coverages, Inc.*, No. 13-cv-21016, Dkt. No. 95 (S.D. Fla. June 24, 2015) (same); *Vergara et al. v. Uber Technologies, Inc.*, No. 15-cv-06942, Dkt. No. 112 (N.D. Ill. March 1, 2018) (awarding attorneys' fees and costs of 32.5% of $20 million common fund in TCPA class action); *Hanley v. Tampa Bay Sports & Entertainment*, No. 19-cv-00550, Dkt.

94 (M.D. Fla. April 23, 2020) (awarding 35% of a reverting settlement fund in TCPA class action). As such, Class Counsel's fee request of 30% of the fund being made available is well within the customary fee award range and is well supported by numerous other fee requests approved by courts in this District and the Eleventh Circuit generally.

5. Litigation of the Actions and achieving the settlement benefits made available to the Settlement Class required skilled and experienced Class Counsel.

The remaining *Johnson* factors – the skill requisite to perform the legal service properly and the experience, reputation and ability of the attorneys – are also satisfied here. Class Counsel are leaders in class action litigation with dozens of successfully litigated cases and numerous class counsel appointments resulting in hundreds of millions of dollars in settlement benefits provided to consumers. *See* McGuire Decl., at ¶¶ 4–5; Cox Decl., at ¶¶ 3, 5; Underwood Decl., at ¶¶ 7–9; Bock Decl., at ¶¶ 3–6. There is no question that the settlement benefits ultimately achieved here were directly a result of the skills brought to bear by Class Counsel. The Settlement Agreement reached here was a result of years of hard-fought litigation against a well-capitalized defendant and involved complex litigation of class certification, ATDS, and jurisdictional issues, including two separate appeals to the Ninth Circuit. Thanks to Class Counsel's decades of combined experience litigating similar such complex cases – including scores of TCPA class actions, and including litigation in courts of appeals and at the U.S. Supreme Court – they were able to overcome the numerous and significant defenses presented by GoDaddy to make settlement the preferred path.

6. There have been no objections received by Class Counsel and almost no exclusions.

In addition to all of the *Johnson* factors supporting the requested fee award it is also noteworthy that, even though Notice was sent to over 1.26 million class members, as of the date of this filing no Class member has filed an objection and only three requests for exclusion have been received. *See* McGuire Decl., at ¶ 21. The overwhelmingly positive response to the Settlement from the Settlement Class members is not surprising given the significant amount of relief provided. Furthermore, given that the Notice specifically explained that Class Counsel would be seeking a fee award amounting to 30% of the benefits being made available, the lack of exclusions and objections – including specifically to the fee award requested here – attests to the Settlement Class' approval of Class Counsel's efforts and the fairness of the compensation sought.

7. The requested fee award was negotiated by the Parties at arms-length and after reaching agreement on the material terms of the Settlement.

Finally, the requested fee award is not only reasonable and justified, it is the product of contentious, arms-length negotiations. The Settlement Agreement provides that Class Counsel may petition for a fee award of up to 30% of the benefits made available, in addition to reimbursement of the litigation costs and expenses incurred in this Action. Ex. A, ¶ 77. The Parties negotiated these attorneys' fees, costs and expenses only after reaching agreement on all the material terms of the Settlement and as part of the same contentious and arms-length negotiations. As such, the Settlement Agreement should be entitled to significant weight in determining the fairness of the fee award sought. *See In re Liberty Nat'l Ins. Cases*, No. 02-cv-2741, 2006 WL 8436814, at *22 (N.D. Ala. Mar. 31, 2006) ("In the absence of any evidence of collusion or detriment to the class, this Court will give substantial weight to a negotiated fee amount, assuming that it represents the parties' 'best efforts to understandingly, sympathetically, and professionally

arrive at a settlement as to attorney's fees'") (quoting *Elkins v. Equitable Life Ins. Co.*, No. 96-cv-296, 1998 WL 133741, at *34 (M.D. Fla. Jan. 27, 1998)).

As the above analysis makes clear, the requested fee award is reasonable and well-supported given the extraordinary amount of settlement benefits Class Counsel was able to negotiate for the Settlement Class in light of the significant challenges presented by GoDaddy and the real risk of having Plaintiffs' claims dismissed altogether.

B. The Requested Fee Award Is Reasonable Given The Significant Lodestar Accrued By Class Counsel.

While *Camden I* "mandated the exclusive use of the percentage approach in common fund cases" (*In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1363 (internal citations omitted)), some courts have nonetheless looked at the lodestar accrued by Class Counsel as a "cross-check" to confirm the reasonableness of the fee award sought. *See, e.g., Pinto,* 513 F. Supp. 2d at 1343 ("[s]ome courts use the lodestar method as a cross-check of the percentage of the fund approach") (internal citations omitted). Here, the requested fee award is also reasonable when cross-checked against the significant lodestar accrued by Class Counsel in the course of pursuing this litigation for over three years.

The lodestar is calculated by multiplying the number of hours reasonably spent times a reasonable hourly rate. *In re Progressive Ins. Litig.*, 2008 WL 11348505, at *7. As stated in Class Counsel's attached Declarations, over the course of three years, Class Counsel have expended a total of 5,423.2 hours in uncompensated time in order to achieve the Settlement in this case, accounting for $2,800,053.00 in attorneys' fees. *See* McGuire Decl., at ¶¶ 11, 18; Cox Decl., at ¶¶

11–13; Underwood Decl., at ¶¶ 12–14; Bock Decl., at ¶¶ 11, 19.[4] Further, Class Counsel anticipate expending additional time and effort through final approval to respond to inquiries from Settlement Class Members, respond to any potential objectors, prepare final approval papers, review claims, and advocate on behalf of the Settlement Class members in the event a claim is wrongfully denied. McGuire Decl., at ¶ 19; Cox Decl., at ¶ 17; Underwood Decl., at ¶ 14. Class Counsel conservatively estimate that the lodestar for these additional efforts will be approximately $45,000–$90,000, resulting in a total base lodestar of at least $2,845,053.00.

Where, as here, Class Counsel's "work is performed on a contingency basis and . . . is of a high quality" the Court should apply a "multiplier" to the base lodestar to determine the appropriate fee award under the lodestar analysis. *See Pinto*, 513 F. Supp. 2d at 1344; *In re Progressive Ins. Litig.*, 2008 WL 11348505, at *7. Here, with a total base lodestar of $2,845,053.00, the requested fee award results in a multiplier of just 3.69. This is well within the range of multipliers commonly applied by other courts in this Circuit in similar complex class actions and is, in fact, far below the multipliers that many courts in this Circuit have found reasonable. *See Pinto*, 513 F. Supp. 2d at 1344 (noting that "multiples much higher than three have been approved" and citing to cases approving multipliers as high as 12 times the lodestar); *In re Progressive Ins. Litig.*, 2008 WL 11348505, at *7 (similar noting that multipliers "between 2.5 and 4" are "reasonable"). Importantly, a multiplier of just 3.69 is not just reasonable but warranted given the contingent nature of the litigation and the risks undertaken by Class Counsel—including their effort at the class certification and appellate levels. Given the defenses raised by GoDaddy, and particularly in

[4] As explained in Class Counsel's Declarations, numerous state and federal courts, including courts in this Circuit, have approved Class Counsel's then-current hourly rates as reasonable in light of their experience and expertise in litigating similar consumer class actions. McGuire Decl., at ¶ 17; Bock Decl., at ¶¶ 12, 19.

light of the recent uncertainty regarding the state of the law on whether any of the calls or text messages at issue were placed by an ATDS due to the U.S. Supreme Court's grant of the petition for certiorari in the *Facebook* appeal, Class Counsel and the Settlement Class members faced a real risk of achieving no recovery whatsoever. As such, this Settlement is an outstanding result in terms of the significant benefits made available to the Settlement Class members. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-cv-3066, 2012 WL 12540344, at *5 (N.D. Ga. Oct. 26, 2012) (awarding attorneys' fee award of $25 million in a settlement providing for $75 million in settlement benefits and finding that a lodestar multiplier of 4 was appropriate and "reflect[ed] such considerations as (1) the contingent nature of the fee; (2) the risk of the case (i.e., the likelihood of success viewed at the time of the filing); (3) the quality of representation; and (4) the result achieved").

In sum, although the lodestar method is not particularly well-suited to evaluating fee requests in class action settlements such as the one here, it serves to confirm the reasonableness of Class Counsel's requested fee. Class Counsel's base lodestar is appropriate and reasonable given the efforts expended, the results obtained, and the relief made available to the Settlement Class members. Further, the risks taken in prosecuting this case coupled with the success obtained for the Settlement Class members amply justify the modest multiplier requested. As such, regardless of whether this Court uses the percentage-of-the-fund method or the lodestar method, the requested attorneys' fee award is fair, reasonable, and justified.

C. The Court Should Approve Class Counsel's Requested Reimbursable Litigation Expenses.

Class Counsel have expended $105,410.51 in reimbursable expenses related to filing fees, travel expenditures, copying, mediation fees, and case administration, with the potential of more expenses yet to come. McGuire Decl., at ¶ 20; Cox Decl., at ¶ 18; Underwood Decl., at ¶ 14; Bock

Decl., at ¶ 20. Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See Waters*, 190 F.3d at 1298 ("plaintiffs' attorneys are entitled to reimbursement of those reasonable and necessary out-of-pocket expenses incurred in the course of activities that benefitted the class") (internal citations omitted). Class Counsel's expenses here were all reasonably incurred in pursuing this litigation. McGuire Decl., at ¶ 20; Cox Decl., at ¶ 18; Underwood Decl., at ¶ 14; Bock Decl., at ¶ 20. Class Counsel have reviewed the expense records carefully and determined that the expenses were necessary to the successful prosecution of this litigation. These expenses were necessary to prosecute litigation of this size and complexity on behalf of the Settlement Class, and they are typical of expenses regularly awarded in large-scale class actions. Therefore, Class Counsel request the Court approve as reasonable the incurred expenses, a request which Defendant does not oppose. Accordingly, this Court should award Class Counsel $105,410.51 in costs and expenses incurred in prosecution of this litigation.

D. The Agreed-Upon Service Awards For the Lead Plaintiffs Are Reasonable And Should Be Approved.

The requested $5,000 service awards for each of the lead Plaintiffs are reasonable and very modest compared to other service awards granted in similar TCPA class action settlements. "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Ingram v. Coca–Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001); *see, e.g.*, *Youngman*, No. 16-cv-01478, Dkt. No. 70 (M.D. Fla. July 31, 2018) (finding that service awards of $10,000 for *each* plaintiff was "reasonable"); *Parsons v. Brighthouse Networks, LLC*, No. 09-cv-267, 2015 WL 13629647, at *16 (N.D. Ala. Feb. 5, 2015) (approving $5,000 service award for class representative); *Martin v. Dun & Bradstreet, Inc.*, No. 12-cv-215, 2014 WL 9913504, at *3 (N.D. Ill. Jan. 16, 2014) (awarding service award of $20,000 in TCPA class action); *Schwyhart*, 182 F. Supp. 3d 1239 (N.D.

Ala. 2016) (awarding $10,000 service award in TCPA case); *Palm Beach Golf Ctr.-Boca, Inc. v. John G. Sarris, D.D.S., P.A.*, 781 F.3d 1245 (11th Cir. 2015) ($10,000 service award in TCPA case after remand); *Markos*, 2017 WL 416425, at *3 (approving service award of $20,000 to each class representative in TCPA class action).

Here, Plaintiffs' efforts and participation in prosecuting this litigation easily justify the $5,000 service award sought for each Plaintiff. Even though no award of any sort was promised to Plaintiffs prior to the commencement of the litigation or at any time thereafter (McGuire Decl., at ¶ 22; Cox Decl., at ¶ 20; Bock Decl., at ¶ 21), Plaintiffs nonetheless contributed their time and effort in pursuing their own TCPA claims, as well as in serving as the representatives on behalf of the Settlement Class members—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. McGuire Decl., at ¶¶ 22–23; Cox Decl., at ¶¶ 20–21; Bock Decl., at ¶ 21.

Ms. Drazen and Mr. Bennett were instrumental in bringing about this Settlement. Without their willingness to undertake the responsibilities and attendant risks with bringing a class action, the successful resolution of this dispute could not have occurred. Their participation in this litigation included meeting with counsel, reviewing documents and pleadings, reviewing and discussing all settlement documents prior to approval, and engaging in numerous conferences with counsel. McGuire Decl., at ¶¶ 22–23; Cox Decl., at ¶¶ 20–21. Furthermore, Mr. Bennett participated in various discovery proceedings, including appearing for a deposition. Cox Decl., at ¶ 21. It is also worth noting that in agreeing to serve as the lead Plaintiffs, Plaintiffs publicly placed their names on this litigation and opened themselves to significant risks – including putting their name on a publicly-filed lawsuit with the dissemination of nationwide notice – which, in and of

itself, is certainly worthy of remuneration. *Columbus Drywall*, 2008 WL 11319972, at *2 (citing *Ingram*, 200 F.R.D. at 685).

The Court should also award John Herrick a service award. Although he is not one of the two appointed Class Representatives for the Settlement Class, Herrick is a class member and his case – *Herrick, et al. v. GoDaddy.com LLC*, No. 16-00254 (D. Az.) – is one of the three class action cases being resolved in this settlement. The leading treatise on class actions identifies four categories of class members who are given incentive awards, including "other class members [who] meaningfully participated in the litigation," including a class member deposed by the defendant. NEWBERG ON CLASS ACTIONS § 17:6 (5th ed. 2016) (citing *Camp v. Progressive Corp.*, No. 01-cv-2680, 2004 WL 2149079, *7 (E.D. La. Sept. 23, 2004) (awarding incentive payments to other plaintiffs who participated in the litigation), and *Shaw v. Intelthinx, Inc.*, No. 13-cv-01229, 2015 WL 1867861, *4 (D. Colo. April 21, 2015) (awarding service awards to other persons "who also dedicated considerable time to the prosecution of this matter, providing declarations, submitting to two depositions each, meeting with Class Counsel of several occasions, and attending an evidentiary hearing")). Here, Herrick was the named plaintiff on his case (which received significant publicity), he responded to discovery and sat for deposition, and he worked with Class Counsel as appropriate to assist in resolving the litigation successfully for the Settlement Class. Bock Decl., at ¶ 21.

In short, were it not for Plaintiffs' willingness to bring the class Actions in their names, their efforts and contributions to the litigation by assisting Class Counsel with their investigation and filing of the cases, and their continued participation and monitoring of the litigation through settlement, the substantial benefit to the Settlement Class members afforded under the Settlement Agreement would not exist. Drazen, Bennett, and Herrick should be compensated for these efforts

and for undertaking such risks. The $5,000 service awards sought here are reasonable, well within (and, indeed, well below) the range of incentive awards approved by numerous other courts, and should be approved.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order: (i) approving an award of attorneys' fees of $10,500,000; (ii) approving an award of costs and expenses of $105,410.51; and (iii) approving an Incentive Award in the amount of $5,000.00 to each lead Plaintiff in recognition of their significant efforts on behalf of the Settlement Class members.

Dated: July 24, 2020

Respectfully submitted,

/s/ Eugene Y. Turin
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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2020, I electronically filed the foregoing *Plaintiffs' Motion and Memorandum in Support of Award of Attorneys' Fees, Costs, and Expenses, and for Service Awards* with the Clerk of the Court using the CM/ECF system. A copy of said document will be electronically transmitted to all counsel of record.

/s/ Eugene Y. Turin
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