IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

DIANA MEY, individually and on behalf of a class of all persons and entities similarly situated,

Plaintiff,

v.

FRONTIER COMMUNICATIONS CORPORATION,

Defendant.

Civil Action No. 3:13-cv-01191 (MPS)
(Dated February 27, 2017)

PLAINTIFF'S APPLICATION FOR
ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARD

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At considerable peril of failure, and through the perseverance of Plaintiff's counsel, a common fund of $11 million has been established for the benefit of the class. Counsel now seeks a reasonable fee in recognition of their efforts, one that reflects the risk of loss assumed and substantial resources devoted in guiding this litigation to a successful conclusion. After more than three years of contested proceedings, fueled with extensive fact and expert discovery, and marked by Plaintiff's success in withstanding three dispositive motions, the parties turned their attention to compromise. The resulting settlement, poised for final approval, will result in significant cash distributions to class members, with no claims process required. Plaintiff's counsel funded the litigation and performed their work without payment.

Plaintiff thus moves the Court, pursuant to Federal Rule of Civil Procedure 23(h)(1), to approve: (1) a fee of one-third the settlement amount, plus expenses; and (2) a $20,000 service award to the class representative, whose rejection of Defendant's Rule 68 offer three years ago permitted the case to advance for the benefit of all class members. Both requests are fair and reasonable, and consistent with district, circuit, and Supreme Court precedent.

Introduction

The parties' dispute has ridden a long road to settlement. On August 20, 2013, Plaintiff initiated this action on behalf of herself and a putative nationwide class, alleging that Defendant Frontier Communications Corporation placed thousands of nuisance telemarketing calls to consumers, without their consent, in violation of the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227. Frontier mounted a formidable defense to these allegations.

At the outset, Frontier sought to halt Plaintiff's suit by tendering a settlement in full satisfaction of Plaintiff's individual claims, and then moving to dismiss the case when Plaintiff

rejected the offer.[1] Frontier's motion was premised on: (1) the Supreme Court's 2013 decision in *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523 (2013), which held that an offer of complete relief under Federal Rule of Civil Procedure 68 mooted a named plaintiff's individual claims; and (2) the Second Circuit's decision in *Doyle v. Midland Credit Management, Inc.*, 722 F.3d 78 (2d Cir. 2013), concluding that an unaccepted Rule 68 offer exceeding the plaintiff's potential recovery rendered moot the underlying case or controversy.

Anticipating Frontier's tactics, however, Plaintiff's counsel filed a class certification motion along with the complaint, relying on authority to the effect that individual claims could not be mooted while such a motion was pending. Plaintiff requested that a ruling on the class certification motion be deferred pending class discovery, and in aid thereof, served interrogatories and requests for production of documents. Nonetheless, Plaintiff was keenly aware that the entire action could be dismissed at any time on the strength of *Genesis* and *Doyle*.

Those concerns were allayed temporarily by the Court's rulings of November 18, 2014, and December 9, 2014, on reconsideration, which denied Frontier's dismissal motion. (ECF Nos. 88 and 106.) The denial was grounded in procedural distinctions attendant to the FLSA claims in *Genesis*, and, in a nod to Plaintiff's litigation strategy, the Court distinguished other authorities cited by Frontier in which the motion for class certification had come only after the offer of judgment.

Meanwhile, the parties could not agree on the proper scope of discovery. When Frontier moved to stay discovery while the Court contemplated the dismissal motion, Plaintiff countered with a comprehensive motion to compel. By order of December 5, 2014, the Court ruled for Plaintiff in significant part, requiring Frontier to produce its call logs, identify the hardware and

[1] Affidavit of Edward A. Broderick in Support of Plaintiff's Application for Attorneys' Fees, Costs and Incentive Award at ¶ 11, attached hereto as Exhibit A.

software used to make those calls, disclose how the numbers were acquired, and produce the scripts used in the solicitation process. Plaintiff also served seven third-party subpoenas and conducted multiple depositions in three states, obtaining call records and lead lists from Frontier's vendors.[2] Ultimately, Frontier and third-party subpoena respondents produced over ten thousand pages of documents for Plaintiff to review and catalog.[3] Discovery being a two-way street, Plaintiff produced over 1400 pages of documents responsive to Frontier's requests. Moreover, counsel for Plaintiff prepared their client to be deposed and defended that proceeding, in addition to defending the depositions of a pair of experts whom Plaintiff retained and consulted.[4]

Once again, however, the litigation was put on hold (ECF No. 125), this time pending the decision of the Supreme Court in *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016). In *Gomez*, the Court granted certiorari on the precise question that had prompted Frontier's dismissal motion: whether "an unaccepted offer to satisfy the named plaintiff's individual claim [is] sufficient to render a case moot when the complaint seeks relief on behalf of the plaintiff and a class of persons similarly situated." *Id.* at 666. Plaintiff's case and the efforts of her counsel — this time following substantial discovery and motions practice — were again squarely at risk. While awaiting the Supreme Court's ruling, the parties engaged in good-faith mediation before the Honorable Edward A. Infante, but were unable to reach an accord.[5]

Plaintiff and her advocates were relieved when the Supreme Court issued its *Gomez* opinion distinguishing the result in *Genesis* and holding that "an unaccepted settlement offer has

[2] *Id.* at ¶ 16.
[3] *Id.*
[4] *Id.* at ¶ 18.
[5] *Id.* at ¶ 20.

no force." 136 S. Ct. at 666.[6] When proceedings resumed, the parties arranged for the depositions of Frontier's experts and agreed on a schedule to, at long last, fully address class certification. (ECF No. 134, allowed ECF No. 135). Less than four months after its reopening, however, the case was imperiled again as Frontier filed a third motion to dismiss, this time contending that Plaintiff lacked constitutional standing, in line with the Supreme Court's decision a few days before in *Spokeo, Inc. v. Robins,* 136 S. Ct. 1540 (2016). Both sides exhaustively briefed the new dispositive motion, after which the Court issued a series of thirty-day stays to facilitate ongoing settlement discussions. Finally, on December 14, 2016, after additional mediation and three months of intense negotiations, the parties reached a tentative settlement, an amended version of which was preliminarily approved by the Court on January 26, 2017.

The preliminarily approved settlement class consists of all individuals or entities whose phone numbers were identified as having received: (i) on a cell phone, a call placed by means of what Plaintiff contends was an Automatic Telephone Dialing System ("ATDS"); or (ii) in instances where the number had been placed on the National Do Not Call Registry for more than thirty days prior, two or more calls in a twelve-month period. Under the settlement, Frontier will deposit $11 million into a common fund to pay class members, the class representative award, attorney fees and costs, and expenses of administration. Notably, class members do not need to file a claim in order to receive compensation, as checks will simply be distributed to class

[6] Post *Gomez* decisions demonstrate the risk faced at all phases of the case by Plaintiff as some courts have held that even a plaintiff who rejects a settlement offer can have a case dismissed by virtue of an adverse judgment entered by the court. *See, e.g., Fulton Dental, LLC v. Bisco, Inc.*, No. 15-11038, 2016 U.S. Dist. LEXIS 118658 *64-65 (N.D. Ill. Sep. 2, 2016) (allowing deposit of funds and entering judgment for defendant).

members. Each class member will receive at least ninety dollars, with the balance of the fund distributed on a per call basis to class members who received multiple calls.

Argument

A. The requested fee is reasonable under the circumstances.

Awards in class actions are most often made in reference to the common fund doctrine, pursuant to which the Supreme Court has observed that "a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *see Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49 (2d Cir. 2000). The percentage method is the exclusive or predominant means of calculating common-fund attorney fees in three circuits. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) (permitting alternative lodestar methodology in statutory fee litigation and in limited other circumstances, though warning that "the court must vigilantly guard against the lodestar's potential to exacerbate the misalignment of the attorneys' and the class's interests"); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991).

"[T]he trend in this Circuit," as is the case in nearly all the remaining federal courts of appeals, is also "toward the percentage method." *McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 422 (2d Cir. 2010); *see also Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-113, 2016 WL 6542707, at *15 (D. Conn. Nov. 3, 2016); *Caitflo, L.L.C. v. Sprint Commc'ns Co. L.P.*, No. 11-00497, 2013 WL 3243114, at *2 (D. Conn. June 26, 2013). This Court has previously recognized and endorsed this approach. *Dixon v. Zabka*, No. 11-982, 2013 WL 2391473, at *6-*7 (D. Conn. May 23, 2013) (Shea, J.) (awarding percentage of common fund to plaintiffs' attorneys in wage-and-hour case). Courts prefer the percentage method because it

"directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (citation and internal quotation marks omitted).

"[W]hether calculated pursuant to the lodestar or the percentage method, the fees awarded in common fund cases may not exceed what is 'reasonable' under the circumstances." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). In *Goldberger*, the Second Circuit collected the "traditional criteria [used] in determining a reasonable common fund fee." *Id.* at 50. Those factors include "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Id.* (citation, internal quotation marks and alteration omitted).

Here, the *Goldberger* factors support Plaintiff's requested attorney fee award of one-third the common fund.

1. Time and Labor Expended by Counsel.

Plaintiff is represented by national counsel Edward A. Broderick and Anthony Paronich of Broderick & Paronich, P.C., in Boston, Massachusetts; John W. Barrett of Bailey & Glasser LLP, in Charleston, West Virginia; and Matthew P. McCue of the Law Offices of Matthew P. McCue, P.C., in Natick, Massachusetts.[7] Together, counsel has expended 1,593 hours to date to advance Plaintiff's cause, and have incurred $77,646 in expenses. Counsel fended-off three dispositive motions, prevailed in a contested discovery dispute involving cross-motions to stay and to compel, engaged in extensive written discovery, retained and prepared experts, deposed witnesses, defended Frontier's depositions, and participated in lengthy settlement negotiations.

[7] The Affidavits of Counsel, detailing their qualifications and work on the case, are attached as Exhibits A, B, and C.

2. Magnitude and Complexities of the Litigation.

The complaint sought to enforce significant public rights on a nationwide scale. Indeed, Plaintiff's experts were able to identify 36,219 unique telephone numbers across the country whose users will receive a meaningful cash payment. But those numbers identified only after extensive litigation vindicating Plaintiff's entitlement to discovery against a well-heeled, resourceful defendant. And those discovery battles had to be conducted in a swirl of uncertainty generated by constant, complex jurisdictional questions bearing on mootness and constitutional standing.

It is important to note, moreover, that the instant matter is readily distinguishable on this factor from the awards in *Goldberger* and *McDaniel*. The court of appeals in those cases affirmed the district courts' reasoning that plaintiffs' counsel had benefited "from the spadework done by federal authorities" during prior civil and criminal actions, *Goldberger*, 209 F.3d at 54, *i.e.*, the "previous unearthing of facts," *McDaniel*, 595 F.3d at 423, and, in analogous proceedings, "the prior mining of relevant case law and shoring up of legal arguments," *id.* The case at bar presents neither of those scenarios. No one drew Plaintiff's counsel a roadmap to assist them along the way with developing the necessary factual record or marshaling the legal arguments necessary to a successful outcome, either with respect to the novel jurisdictional issues in play or on the merits. Counsel brought their own shovels, now well-worn, and did their own digging.

3. Risk of the Litigation.

The Second Circuit has repeatedly recognized that "[t]he level of risk associated with litigation . . . is 'perhaps the foremost factor' to be considered" in ascertaining a reasonable fee in a common-fund action. *McDaniel*, 595 F.3d at 424 (quoting *Goldberger*, 209 F.3d at 54 (internal

citation omitted)). The risk of zero recovery here was present from the moment Frontier offered Plaintiff a settlement that, upon rejection, gave rise to the initial motion to dismiss under *Genesis* and *Doyle*. A few months after Plaintiff navigated that minefield, the Supreme Court granted certiorari in *Gomez* to decide the precise issue on which Plaintiff thought she had finally prevailed. Because *Gomez* was also a TCPA case, there likely would be no room to distinguish an adverse holding. When the Supreme Court's decision proved supportive and finally green-lighted Plaintiff's claim to proceed, it was only because Justices Kennedy and Thomas rather unexpectedly switched sides from the opposite result three terms earlier in *Genesis.* Five weeks after that, the Court decided *Spokeo*, begetting yet another challenging motion to dismiss and providing Frontier with significant bargaining leverage during the protracted negotiations that followed.

But the constant threat of dismissal spawned by the Supreme Court was hardly the only element of risk counsel assumed. Frontier was poised to rigorously contest Plaintiff's attempt at class certification, and had the case progressed beyond that, Plaintiff would have been constrained to overcome stiff challenges concerning Frontier's vicarious liability for calls physically dialed by a third party, as well as whether the hardware and software used to make the phone calls was an ATDS as defined in the TCPA.[8] Frontier might even have petitioned the FCC to seek a declaratory ruling on the consent or ATDS issues. Such a petition could have delayed the resolution of this litigation for several years. In fact, such a petition, after being before the FCC for more than a year, is pending before the District of Columbia Circuit Court of Appeals right now. *See ACA Int'l v. F.C.C.*, No. 15-1211 (D.C. Cir. appeal filed July 10, 2015).

[8] Courts have reached different conclusions on the requirements of an ATDS. *Compare Sterk v. Path, Inc.*, 46 F. Supp. 3d 813 (N.D. Ill. 2014) (adopting Plaintiff' interpretation) *with Dominguez v. Yahoo!, Inc.*, 8 F. Supp. 3d 637 (E.D. Pa. 2014) (adopting Defendant's interpretation).

The entirety of the litigation was fraught with risk, from beginning to end. Through counsel's stewardship, that risk was managed and eventually transformed into an $11 million certainty. This "foremost factor" in the *Goldberger* analysis weighs heavily in favor of the requested fee.

4. Quality of Representation.

As detailed in the affidavits supporting preliminary approval of the settlement (ECF No. 154), Plaintiff's lawyers are well-versed in mass and class consumer litigation. Through the investigation and prosecution of the claims in this case, each member of Plaintiff's team has brought to bear his significant experience in TCPA consumer class actions. The quality of Plaintiff's representation has manifested itself in the results obtained, as the agreed payout of ninety dollars per class member without the need for a claims process plus additional sums for multiple violations compares favorably to other settlements under the TCPA. *Cf., e.g.*, *Manouchehri v. Styles for Less, Inc.*, Case No. 14-2521, 2016 WL 3387473, at *2, 5 (S.D. Cal. June 20, 2016) (preliminarily approving settlement where class members could choose to receive either $10 cash award or $15 voucher); *Franklin v. Wells Fargo Bank, N.A.*, Case No. 14-2349, 2016 WL 402249 (S.D. Cal. Jan. 29, 2016) (approving settlement where class members received approximately $71.16); *Estrada v. iYogi, Inc.*, No. 13–01989, 2015 WL 5895942, at *7 (E.D. Cal. Oct. 6, 2015) (granting preliminary approval to TCPA settlement where class members estimated to receive $40); *Rose v. Bank of Am. Corp.*, No. 11-02390, 2014 WL 4273358, at *10 (N.D. Cal. Aug. 29, 2014) (approving TCPA settlement of $20 to $40 per class member); *Cubbage v. Talbots, Inc.*, No. 09-00911, ECF. No. 114 (W.D. Wash. Nov. 5, 2012) (granting final approval of TCPA settlement where class members would receive $40 cash or $80 merchandise certificate); *Garret, et al. v. Sharps Compliance, Inc.*, No. 10-04030, ECF. No. 65

(N.D. Ill. Feb. 23, 2012) (claimants received between $27.42 and $28.51); *Spillman v. RPM Pizza, LLC*, No. 10-349 (E.D. La. May 23, 2010) (TCPA settlement approved with one subclass payout of $15 and second subclass receiving coupons worth $6.71 to $11.99).

5. Requested Fee in Relation to the Settlement.

There is no question that $11 million is a lot of money, but this is not one of those worrisome "cases that result in a very large monetary award," such that "the percentage method holds the potential to result in attorneys' fees many times greater than those that would have been earned under the lodestar of hourly rate multiplied by hours worked." *McDaniel*, 595 F.3d at 418-19. Recently, in *Amadeck v. Capital One Fin. Corp.*, 80 F. Supp. 3d 781 (N.D. Ill. 2015), the district court conducted an exhaustive review of attorney fee award factors in connection with its final approval of the underlying TPCA class action settlement, devising a risk-adjusted fee structure to help govern its analysis.

The plaintiffs' counsel in *Amadeck* negotiated a settlement fund in excess of $75 million, of which the court awarded a fee of about 20.77%, or $15,668,265. The court, however, employed a diminishing scale to determine the proper overall percentage, in which it awarded 36% of the first $10 million recovered and only 15% of amounts in excess of $45 million. *See Amadeck*, 80 F. Supp. 3d at 807 and Table 4. In the case at bar, the *Amadeck* structure would support a fee award of $3,850,000, amounting to 36% of the first $10 million of the common fund ($3,600,000), plus 25% of the remaining $1 million ($250,000). Counsel here has requested a slightly smaller one-third award, or approximately $3,666,667.

Counsel's request for one-third of the common fund is "reasonable and consistent with the norms of class litigation in this circuit." *Willix v. Healthfirst, Inc.*, No. 07-1143, 2011 WL 754862, at *7 (E.D.N.Y. Feb. 18, 2011) (collecting cases); s*ee also, e.g.*, *In re Crazy Eddie Sec.*

Litig., 824 F. Supp. 320, 327 (E.D.N.Y. 1993) (approving 33.8% award); *In re Medical X-Ray Film Antitrust Litigation*, No. 93-5904, 1998 WL 661515 (E.D.N.Y. Aug. 7, 1998) (approving fee award amount to one-third of nearly $40 million class settlement, plus expenses). In fact, this Court has previously recognized that an award of slightly more than 30% was "less than the typical fee award of one-third that courts in this Circuit routinely award in wage and hour settlements." *Dixon v. Zabka*, No. 11-982, 2013 WL 2391473, at *2 (D. Conn. May 23, 2013) (citing *Aros v. United Rentals, Inc.*, No. 10-73, 2012 WL 3060470, at *7 (D. Conn. July 26, 2012)); *see also Goldberger*, 209 F.3d at 51 (noting "commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest") (citing *In re Union Carbide Corp. Consumer Prod. Bus. Sec. Litig.*, 724 F. Supp. 160, 168 (S.D.N.Y. 1989)).

The *Goldberger* endorsement of incentive is honored by a one-third award, where, as here, class counsel made a substantial "investment of time without the certainty of compensation and spent several years defeating motions to dismiss and conducting discovery to enable them to adequately assess settlement offers." *In re Medical X-Ray Film*, 1998 WL 661515, at *7; *see also Willix*, 2011 WL 754862, at *7 ("Class Counsel risked time and effort and advanced costs and expenses, with no ultimate guarantee of compensation."); *In re Crazy Eddie*, 824 F. Supp. at 326 (observing that "class counsel made a substantial investment of time with no certainty of compensation," and "exhibited sustained and admirable tenacity in unearthing facts needed to develop these cases").

6. Public Policy Considerations.

It is difficult to immediately conceive of a federal law that has been more universally welcomed and lauded than the one whose aim is to eradicate the unwanted proliferation of

strident, screeching solicitations interrupting our evening equanimity. Counsel's expenditure of time and resources in faithful enforcement of the TCPA have been in the best tradition of service, not only to their client, not merely to the class, but to the public at large. As one federal district court remarked, "In the context of the TCPA, the class action device likely is the optimal means of forcing corporations to internalize the social costs of their actions." *Bee, Denning, Inc. v. Capital Alliance Grp.*, 301 F.R.D. 614, 631 (S.D. Cal. Sept. 24, 2015). The Second Circuit is indisputably correct that "public policy supports the pursuit of meritorious class action litigation," *McDaniel*, 595 F.3d at 426, but not often more so than here.

B. A lodestar crosscheck confirms the reasonableness of the fee request.

The Second Circuit "encourage[s] the practice of requiring documentation of hours as a 'cross check' on the reasonableness of the requested percentage." *Goldberger*, 209 F.3d at 50 (citing *General Motors*, 55 F.3d at 820, *supra* at 5). The hours so documented "need not be exhaustively scrutinized by the district court," but can instead "be tested by the court's familiarity with the case." *Id.* For purposes of the lodestar cross check, courts often apply a multiplier "by examining such factors as the quality of counsel's work, the risk of the litigation and the complexity of the issues." *In re Fine Host Corp. Sec. Litig.*, No. 97-2619, 2000 WL 33116538, at *6 (D. Conn. Nov. 8, 2000) (quoting *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 226, 232 (2d Cir. 1987)).

In that regard, "multipliers of between 3 and 4.5 have been common." *Silverberg v. People's Bank*, No. 90-00600, 2000 WL 502621, at *3 (D. Conn. Mar. 17, 2000) (citing *Rubin v. Concord Assets Group, Inc.*, No. 89 Civ. 6130, 1991 WL 275757, at *1 (S.D.N.Y. Dec. 19, 1991) (4.4 multiplier used); *Pepsico Sec. Litig.*, No. 82-8403, 1985 WL 44682 (S.D.N.Y. Apr. 26, 1985) (3.3 multiplier); *In re Beverly Hills Fire Litig.*, 639 F. Supp. 915 (E.D. Ky. 1986) (5x

multiplier); *In re Boston & Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A.*, 778 F.2d 890 (1st Cir. 1985) (6x multiplier)). In *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172 (W.D.N.Y. 2011), the court approved a lodestar cross check of about 5.3, reviewing authorities decided after *Fine Host* to assure itself that "[c]ourts regularly award . . . multipliers from two to six times lodestar." *Id.* at 185 (quoting *Johnson v Brennan*, No. 10-4712, 2011 WL 4357376, at *20 (S.D.N.Y. Sept. 16, 2011) (collecting cases)).

Here, Plaintiff's counsel worked 1,593 hours, resulting in a base lodestar of $849,543.33 to date. The basis for this calculation and the reasonableness of counsel's rates is attested to by their attached affidavits.[9] The lodestar multiplier of Plaintiff's requested fee is 4.3, well within the range of reasonableness.

C. Plaintiff's efforts on behalf of the class merit the requested service award.

Finally, Plaintiff requests that she be granted a service award in compensation for the time and effort she expended in successfully prosecuting this case to a successful. Service awards acknowledge representative plaintiffs' hard work and sacrifices in support of the class, as well as their promotion of the public interest. Courts around the country allow such awards to named plaintiffs or class representatives. *See Varcallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 257 (D.N.J. 2005); s*ee also In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 131 (S.D.N.Y. 2009) (recognizing that "incentive awards" for named plaintiffs as high as $35,000 and even $45,000 "are within the range of what other courts have found to be reasonable" (citation omitted)).

[9] *See* Exhibit A (Broderick) at ¶¶ 21-24; Exhibit B (Barrett) at ¶¶ 8-11; Exhibit C (McCue) at ¶¶ 8-12. As further set forth in the affidavits, Class Counsel's hourly rates are consistent with the hourly rates of attorneys of similar background and experience, as well as with the rates recently used by other district courts to conduct a lodestar cross-check.

In determining whether to approve a service or incentive award, courts in this circuit consider

> [t]he existence of special circumstances including the personal risk (if any) incurred by the plaintiff-applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value (e.g., factual expertise), any other burdens sustained by that plaintiff in lending himself or herself to the prosecution of the claim, and, of course, the ultimate recovery.

In re Air Cargo Shipping Servs. Antitrust Litig., No. 06-MD-1775, 2015 WL 5918273, at *4 (E.D.N.Y. Oct. 9, 2015) (citations omitted).

Here, Plaintiff seeks a modest service award of $20,000, which Frontier does not oppose. Plaintiff has been closely involved in the litigation of this matter since its inception in 2013. She was deposed and constrained to respond to numerous discovery requests. Most importantly, Plaintiff elected to forgo short-term personal gain for the long-term benefit of the entire class by rejecting Frontier's initial settlement offer in complete satisfaction of her individual claims. In recognition of her selfless service, the requested award is reasonable.

Conclusion

For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this Application for Attorney Fees in its order to be entered after the May 31, 2017 Final Approval Hearing, and authorize such fees in the amount of one-third the negotiated common fund ($3,666,667) approve an additional payment to counsel of $77,646.99 for the necessary costs and expenses of litigation, and permit the distribution to Plaintiff of a $20,000 service award from the common fund.

Dated: February 27, 2017

Respectfully submitted,
Diana Mey

By Counsel:

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/ Edward A. Broderick
Edward A. Broderick

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

DIANA MEY, individually and on behalf of a class of all persons and entities similarly situated, Plaintiff vs. FRONTIER COMMUNICATIONS CORPORATION Defendant	Civil Action No. 3:13-cv-1191-MPS

AFFIDAVIT OF EDWARD A. BRODERICK IN SUPPORT OF PLAINTIFF'S APPLICATION FOR ATTORNEY'S FEES, COSTS, AND INCENTIVE AWARD

1. I make this declaration in support of the Plaintiff's Application for Attorney's Fees, Costs, and Incentive Award to describe my qualifications and the work that I and my co-counsel have done in identifying, investigating, and prosecuting claims on behalf of the class.

2. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, over 18 years of age, and competent to testify and make this affidavit on personal knowledge. I have been admitted to practice before the United States District Courts for the District of Massachusetts, the Eastern District of Michigan, the Eastern District of Wisconsin and the District of Colorado, as well as the First Circuit Court of Appeals. From time to time, I have appeared in other Federal District Courts *pro hac vice*. I am in good standing in every court to which I am admitted to practice. Along with my co-counsel in this action, I have faithfully, effectively, and zealously represented the interests of the class in this action.

Qualifications of Counsel

3. I am a 1993 graduate of Harvard Law School. Following graduation from law school, I served as a law clerk to the Honorable Martin L.C. Feldman, United States District Judge in the Eastern District of Louisiana.

4. Following my clerkship, from 1994 to December 1996, I was an associate in the litigation department of Ropes & Gray in Boston, where I gained class action experience in the defense of a securities class action, *Schaeffer v. Timberland*, in the United States District Court in New Hampshire, and participated in many types of complex litigation.

5. From January 1997 to March 2000, I was an associate with Ellis & Rapacki, a three-lawyer Boston firm focused on the representation of consumers in class actions.

6. In March 2000, I co-founded the firm of Shlansky & Broderick, LLP, focusing my practice on complex litigation and the representation of consumers.

7. In 2003, I started my own law firm focusing exclusively on the litigation consumer class actions.

8. I have served as class counsel in more than twenty-five consumer class action cases. Summaries of these cases were included in my affidavit in support of preliminary approval of the settlement. In addition, just last month, I and my co-counsel obtained a $20.5 million jury verdict in *Krakauer v. DISH Network, LLC,* a TCPA class action in the Middle District of North Carolina.

Work of Counsel in Identifying, Investigating, and Prosecuting Claims in this Action

Litigation and Settlement Negotiations

9. The work on Plaintiff's claims was very much a team effort by Plaintiff's counsel: John Barrett, Matthew McCue, my partner Anthony Paronich, and myself. All counsel weighed

in on strategy decisions via regular emails and conference calls when required. Prior to filing the Complaint in this action, Plaintiff's counsel investigated Ms. Mey's claims, researched the proper venue and jurisdiction in which to bring the action, and assessed the financial strength of Frontier as a prospective class action defendant. We gathered Ms. Mey's records, listened to the recording of the call, and investigated other complaints regarding Frontier calls. Messrs. Barrett, McCue, Paronich and I all sought and were granted permission to appear *pro hac vice* in the action.

10. Along with the Complaint, Plaintiff moved for class certification in order to forestall a "pick off" offer to Ms. Mey in an effort to deprive her of standing to pursue claims on behalf of a class. Plaintiff further requested that the Court stay briefing on her motion for class certification to allow her to obtain discovery to further support certification.

11. On October 14, 2013, shortly after Defendant's counsel were engaged in the action, Frontier's counsel sent a written settlement offer to Plaintiff, together with a check for $6,400. Frontier additionally put forth the same terms in an Offer of Judgment. Ms. Mey rejected the settlement offer as it did not include an offer of relief to the class she sought to represent.

12. On October 16, 2013, Frontier moved to dismiss Plaintiff's Complaint, asserting that its settlement offer (and its Offer of Judgment) deprived Plaintiff of Article III standing in the case.

13. All of Plaintiff's counsel contributed to the brief in opposition to Defendant's motion to dismiss. Defendant additionally moved to stay discovery in the action during the pendency of its Motion to Dismiss, which Plaintiff opposed.

14. While those motions were pending, Plaintiff's counsel pressed forward with discovery to secure the critical calling records in the case, eventually filing a motion to compel Defendant's discovery responses on February 12, 2014.

15. On October 15, 2014, Judge Meyer entered an order staying discovery in the case pending a ruling on Defendant's Motion to Dismiss. On November 5, 2014, this case was transferred from Judge Meyer to Judge Shea, and shortly thereafter, the Court denied Defendant's Motion to Dismiss.

16. Ultimately, Plaintiff's counsel secured the production of and reviewed over ten thousand pages of documents. The discovery was focused on Frontier's liability for the telemarketing at issue, as well as identifying class members and complaints that arose from the telemarketing. Plaintiff's counsel served seven subpoenas, obtaining extensive responses from Dunn & Bradstreet (the seller of the lists used for the calling campaign), Virido, LLC (the entity retained to place the calls), and Five9, Inc., (the provider of the internet-based calling platform used to place the calls).

17. Plaintiff's counsel also retained two expert witnesses in the case: Mr. Jeffrey Hansen who testified as to identifying cell phones in the calling records, and Ms. Anya Verkhovskaya who analyzed the calling records to establish violations of the TCPA's restrictions on calls to registrants on the National Do No Call Registry.

18. Plaintiff's counsel took offensive depositions in three states. Mr. Paronich took the Rule 30(b)(6) deposition of Five9, LLC, in San Ramon, California, and of Frontier's employee Gregory Anderson in Columbus, Ohio. Mr. McCue conducted a Rule 30(b)(6) deposition of Virido, LLC in Lincoln, Nebraska. In addition, Mr. Barrett defended the deposition

of Plaintiff Diana Mey in Wheeling, West Virginia, and Mr. Paronich defended the deposition of Plaintiff's expert witness Anya Verkhovskaya in Milwaukee, Wisconsin.

19. On June 3, 2016, Frontier filed a second motion to dismiss, asserting that under the United States Supreme Court's decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016), Ms. Mey had not suffered a sufficiently particularized and concrete harm sufficient to support Article III subject matter jurisdiction. Plaintiff timely opposed this second motion to dismiss.

20. Meanwhile, settlement negotiations in the case were as hard fought as the litigation itself. The parties engaged in two mediations both with the assistance of a retired United States Magistrate Judge, the Hon. Edward Infante. The first mediation, on October 12, 2015, did not result in a settlement. The second mediation, on August 18, 2016, in San Francisco, also did not result in an immediate settlement; the parties did make progress, however, and through continued direct negotiations reached the settlement for which Plaintiff now seeks approval. Along with co-counsel, I attended both mediations, and I took the direct negotiating role in the following direct discussion that resulted in the settlement. All of Plaintiff's attorneys were consulted throughout, and had input on negotiations, offers, and counteroffers.

Counsel's Time and Expenses

21. My law firm monitors resource levels to ensure that time and expenses are efficiently utilized to prevent waste and duplication of effort.

22. With respect to billing practices, my law firm requires its personnel (attorneys and staff) to keep contemporaneous time records, and bills its attorneys and staff at rates that are commensurate with their years of practice in the localities in which they practice.

23. I am familiar with the hourly rates of attorneys of similar background and

experience, practicing in this region and in other courts nationwide. My rate of $700 per hour is reasonable in relation to those rates, as is the rate of $450 per hour for my partner Anthony Paronich. Additionally, Mr. Paronich, our co-counsel, and I have used these rates in calculating lodestar for attorneys' fee purposes in several other nationwide class actions. *See, e.g., Mey v. Interstate National Dealer Services, Inc*., No. 14-01846 (N.D. Ga June 8, 2016) (approving $4,200,000 settlement and attorney fee based on hourly rate of $700 for myself and $450 for Mr. Paronich); *Jay Clogg Realty Group, Inc. v. Burger King Corporation*, No. 13-cv-00662 (D. Md. April 15, 2015) (approving $8,500,000 settlement and attorney fee based on hourly rate of $700 for myself, plus $425 for Mr. Paronich (who was then an associate); *Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC*, No. 11-02467 (D. Md. Feb. 12, 2015) (approving settlement of $4,500,000 and attorney fee based on hourly rate of $700 for myself and co-counsel Matthew P. McCue, plus $425 for Anthony Paronich, who was an associate at the time).

24. From the commencement of our factual investigation of Frontier's practices through the preparation of the preliminary approval documents, my firm spent 1014.5 hours on this case (not including time or expenses on the petition for attorney's fees and expenses, and also not including what I estimate will be an additional 20 hours to be spent submitting final approval brief, attending final approval hearing and responding to class member inquiries) resulting in a total lodestar amount of $526,183.33. We incurred $33,400.95 in unreimbursed expenses.

25. A sampling of other class actions in which I have represented classes of consumers follows:

i. In re General Electric Capital Corp. Bankruptcy Debtor Reaffirmation Agreements Litigation (MDL Docket No. 1192) (N.D. Ill) (nationwide class action challenging reaffirmation practices of General Electric Capital Corporation, settlement worth estimated $60,000,000).

ii. LaMontagne, et al. v. Hurley State Bank, et al., USDC, D. Mass., C.A. No. 97-30093-MAP (nationwide class action challenging reaffirmation practices of the credit services of Radio Shack and other entities).

iii. Hurley v. Federated Department Stores, Inc., et al, USDC D. Mass. Civil Action No. 97-11479-NG (nationwide class action challenged bankruptcy reaffirmation practices of Federated Department Stores and others; $8,000,000 recovery for class).

iv. Berry, et al. v. Stop & Shop Supermarket Company, Middlesex Superior Court, C.A. No. 97-4612 (successful statewide class action brought on behalf of consumers overcharged sales tax on their purchases—obtained full refund).

v. Valerie Ciardi v. F. Hoffman LaRoche, et al, Middlesex Superior Court Civil Action No. 99-3244D, (class action pursuant to Massachusetts Consumer Protection Act, M.G.L. c. 93A brought on behalf of Massachusetts consumers harmed by price-fixing conspiracy by manufactures of vitamins; settled for $19,600,000).

vi. Shelah Feiss v. Mediaone Group, Inc, et al, USDC N. District Georgia, Civil Action No. 99-CV-1170, (multistate class action on behalf of consumers; estimated class recovery of $15,000,000--$20,000,000).

vii. Mey v. Herbalife International, Inc., USDC, D. W. Va., Civil Action No. 01-C-263M. Co-lead counsel with Attorney McCue and additional co-counsel, prosecuting consumer class action pursuant to TCPA on behalf of nationwide class of junk fax

and prerecorded telephone solicitation recipients. $7,000,000 class action settlement preliminarily approved on July 6, 2007 and granted final approval on February 5, 2008.

viii. Mulhern v. MacLeod d/b/a ABC Mortgage Company, Norfolk Superior Court, 2005-01619 (Donovan, J.). Represented class of Massachusetts consumers who received unsolicited facsimile advertisements in violation of the TCPA and G.L. c. 93A. In May of 2004, on Direct Appellate Review of the trial court's dismissal for lack of jurisdiction, the Massachusetts Supreme Judicial Court issued a unanimous decision approving a consumer's right to bring suit in Massachusetts state courts for a telemarketer's violation of the Telephone Consumer Protection Act, 47 U.S.C. 227. See Thomas Mulhern v. John McLeod, d/b/a ABC Mortgage, 441 Mass. 754 (2004). Case certified as a class action, and I was appointed co-lead counsel with Attorney Matthew McCue by the Court on February 17, 2006, settlement for $475,000 granted final approval by the Court on July 25, 2007.

ix. I served as co-counsel on a Massachusetts consumer telemarketing class action entitled Evan Fray-Witzer, v. Metropolitan Antiques, LLC, NO. 02-5827 Business Session, Judge Van Gestel. In this case, the defendant filed two Motions to Dismiss challenging the plaintiff's right to pursue a private right of action and challenging the statute at issue as violative of the telemarketer's First Amendment rights. Both Motions to Dismiss were denied. Class certification was then granted and I was appointed co-lead class counsel. Companion to this litigation, my co-counsel and I successfully litigated the issue of whether commercial general liability insurance provided coverage for the alleged illegal telemarketing at issue. We ultimately

appealed this issued to the Massachusetts Supreme Judicial Court which issued a decision reversing the contrary decision of the trial court and finding coverage. See Terra Nova Insurance v. Fray-Witzer et al., 449 Mass. 206 (2007). This case resolved for $1.8 million.

x. I served as co-class counsel in the action captioned Shonk Land Company, LLC v. SG Sales Company, Circuit Court of Kanawha County, West Virginia, Civil Action No. 07-C-1800 (multi-state class action on behalf of recipients of faxes in violation of TCPA, settlement for $2,450,000, final approval granted in September of 2009.

xi. I served as co-class counsel in Mann & Company, P.C. v. C-Tech Industries, Inc., USDC, D. Mass., C.A. 1:08CV11312-RGS, class action on behalf of recipients of faxes in violation of TCPA, settlement for $1,000,000, final approval granted in January of 2010.

xii. I served as co-class counsel in Evan Fray Witzer v. Olde Stone Land Survey Company, Inc., Massachusetts Superior Court, Civil Action No. 08-04165 (February 3, 2011) (final approval granted for TCPA class settlement). This matter settled for $1,300,000.

xiii. I served as co-class counsel in Milford & Ford Associates, Inc. and D. Michael Collins vs. Cell-Tek, LLC, USDC, D. Mass. C. A. 1:09-cv-11261-DPW, class action on behalf of recipients of faxes in violation of TCPA, settlement for $1,800,000, final approval granted August 17, 2011 (Woodlock, J.).

xiv. I served as co-class counsel in Collins v. Locks & Keys of Woburn, Inc.., Massachusetts Superior Court, Civil Action No. 07-4207-BLS2 (December 14, 2011) (final approval granted for TCPA class settlement). This matter settled for

$2,000,000.

xv. I was appointed class counsel in Brey Corp t/a Hobby Works v. Life Time Pavers, Inc., Circuit Court for Montgomery County, Maryland, Civil Action No. 349410-V (preliminary approval granted for TCPA class settlement). This matter settled for $1,575,000.

xvi. I was appointed class counsel in Collins, et al v. ACS, Inc. et al, USDC, District of Massachusetts, Civil Action No. 10-CV-11912 a TCPA case for illegal fax advertising, which settled for $1,875,000.

xvii. I was appointed class counsel in Desai and Charvat v. ADT Security Services, Inc., USDC, NDIL, Civil Action No. 11-CV-1925, settlement of $15,000,000 approved.

xviii. I was appointed class counsel in Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC, USDC, D. MD, Civil Action No. 11-CV-02467, settlement of $4,500,000 given final approval on February 12, 2015.

xix. I was appointed class counsel in Jay Clogg Realty Group, Inc. v. Burger King Corporation, Civil Action No. 13-cv-00662, USDC, D. MD, TCPA settlement of $8,500,000 approved on April 15, 2015.

xx. I was appointed as class counsel in a contested class certification in a Do Not Call case arising under the TCPA in Thomas Krakauer v. Dish Network, L.L.C., USDC MDNC, Civil Action No. 1:14-CV-333 on September 9, 2015. After a five-day trial, the jury returned a verdict in favor of plaintiff and the class of $20,446,400 on January 19, 2017. (Dkt. 292)

xxi. I was appointed class counsel in Mey v. Interstate National Dealer Services, Inc., 1:14-cv-01846-ELR, NDGA, which resulted in final approval of a TCPA class

settlement of $4,200,000 on June 8, 2016, and entry of a final judgment on June 15, 2016.

xxii. I was appointed class counsel Philip Charvat and Ken Johansen v. National Guardian Life Insurance Company, 15-cv-43-JDP (WDWI) which resulted in a TCPA class settlement for $1,500,000 which was granted which was granted final approval on August 4, 2016.

xxiii. I was appointed class counsel in Bull v, US Coachways, Inc., 1:14-cv-05789, NDIL, in which a TCPA class settlement was finally approved on November 11, 2016 with an agreement for judgment in the amount of $49,932,375 with an assignment of rights against defendant's insurance carrier.

xxiv. I was appointed as class counsel in Charvat v. AEP Energy, 1:14cv03121 NDIL, class settlement of $6 million granted final approval on September 28, 2015.

xxv. I was appointed as class counsel in Dr. Charles Shulruff, D.D.S. v. Inter-med, Inc., 1:16-cv-00999, NDIL, class settlement of $400,000 granted final approval on November 22, 2016.

xxvi. I was appointed as class counsel in Toney. v. Sempris, LLC, et. al., 1:13-cv-00042, class settlement of $2,100,000.00 granted final approval on December 1, 2016 (ND Ill., Dkt. No. 311).

xxvii. I was appointed as class counsel in Smith v. State Farm Mut. Auto. Ins. Co. , et. al., 1:13-cv-02018, class settlement of $7,000,000.00 granted final approval on December 8, 2016 (ND Ill., Dkt. No. 338).

Executed this 27th day of February, 2017.

/s/ *Edward A. Broderick*
Edward A. Broderick

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DIANA MEY, individually and on behalf of a class of all persons and entities similarly situated, Plaintiff, v. FRONTIER COMMUNICATIONS CORPORATION, Defendant.	Case No. 13-cv-01191 (MPS)

AFFIDAVIT OF JOHN W. BARRETT IN SUPPORT OF PLAINTIFF'S APPLICATION FOR ATTORNEY'S FEES, COSTS, AND INCENTIVE AWARD

1. I am submitting this declaration to describe my qualifications and the work that I and my co-counsel have done in identifying, investigating, and prosecuting claims on behalf of the class.

2. I am an attorney duly admitted to practice in the State of West Virginia and the Commonwealth of Massachusetts, over 18 years of age, and competent to testify and make this affidavit on personal knowledge. I have been admitted to practice in numerous United States District Courts, as well as the Fourth, Sixth, and Eleventh Circuit Courts of Appeals. I am in good standing in every court to which I am admitted to practice.

Qualifications of Counsel

3. I have practiced law for 20 years. I received a B.A. from the University of Pennsylvania in 1988, and my law degree from Boston University School of Law, *cum laude*, in 1996. From 1996 through 1998 I clerked for Charles H. Haden II, Chief Judge of the United

States District Court for the Southern District of West Virginia. Thereafter I practiced with a two-lawyer firm for three years, then as a sole practitioner for three years. I joined Bailey & Glasser LLP as a partner in 2005.

4. Since then, we have grown from seven to 60 lawyers, with offices in eight locations. I am the firm's Chief Operating Officer, and am also responsible for overseeing our entire contingent-fee practice, which spans areas ranging from product liability class actions such as the Toyota sudden acceleration and Volkswagen diesel fraud multi-district litigations (where we serve in court-appointed leadership roles), to antitrust cases, to ERISA breach of fiduciary duty cases, to consumer protection class actions, and to Telephone Consumer Protection Act cases such as this one.

5. I have practiced in consumer class actions for more than 15 years, and more specifically in TCPA class actions for approximately the last ten years.

6. I am AV rated by Martindale-Hubbell. I am a member of Public Justice; the West Virginia and American Associations for Justice; the John A. Field, Jr. Chapter of the American Inn of Courts; and the National Association of Consumer Advocates, which among other things maintains comprehensive standards and guidelines for litigating and settling consumer class actions in an effort to promote the ethical and proper use of the class action device. *See* 176 F.R.D. 375 (published in 1998, fully updated in 2006 and 2014).

7. My class, mass, and consumer protection cases include:

- *Krakauer v. DISH Network, L.L.C.,* Civil Action No. 1:14-333 (M.D. N.C.) (served as co-lead trial counsel in winning a Jan. 17, 2017 jury verdict of $20.5 million for nationwide class of residential telephone subscribers alleging violations of the TCPA's do-not-call provisions).

- *Generic Drug Litigation (State of West Va. v. Rite Aid of West Va.*, Civil Action No. 09-C-27; and *State of West Va. v. CVS Pharmacy, Inc.,* Civil Action No. 09-C-226 (Circuit Court of Boone County, West Virginia) (serving as Special

Assistant Attorney General, won settlements of more than $10 million in *parens patriae* consumer protection litigation);

- *Carter v. Forjas Taurus SA et al.*, Civil Action No. 1:13-CV-24583 (S.D. Fla.) (class counsel for unprecedented product liability class action against Brazilian pistol manufacturer; settlement provides for the free exchange of defective pistols for new, nondefective pistols (unlimited by any claims period), or cash payments of up to $30 million for returned pistols; total value of settlement $240 million);

- *Desai v. ADT Security,* Civil Action No. 11-C-1925 (N.D. Ill.) ($15 million TCPA settlement for nationwide class);

- *Mey v. Herbalife International*, Inc., Civil Action No. 01-C-263 (Circuit Court of Ohio County, West Virginia) ($7 million nationwide class action settlement alleging violations of the TCPA);

- *Shonk v. SG Sales Co.,* Civil Action No. 07-C-1800 (Circuit Court of Kanawha County, West Virginia) ($2.45 million nationwide settlement of TCPA class action);

- *Brooks v. City of Huntington*, Civil Action No. 11-C-125 (Circuit Court of Wayne County, West Virginia) (lead trial counsel 2011 jury trial for 40 Huntington residents whose homes and properties were flooded by a municipal stormwater control system; total recovery exceeded $1 million);

- *Ooten v. Massey Coal*, Civil Action No. 02-C-203 (Circuit Court of Mingo County, West Virginia) (trial counsel in two-phase, six-week jury trial alleging mining company damaged the groundwater supplies of coalfield residents; total cash recovery was $3.2 million, plus injunctive relief);

- *Cummins v. H & R Block, Inc.*, Civil Action No. 03-C-134 (Circuit Court of Kanawha County, West Virginia) (consumer class action resulting in $62.5 million multistate settlement, including $32.5 million for West Virginia consumers);

- *State of West Va. ex rel. Darrell V. McGraw v. Microsoft Corporation*, Civil Action No. 01-C-197 (Circuit Court of Boone County, West Virginia) (*parens patriae* antitrust and consumer protection action; settlement valued at more than $20 million);

- *Anderson v. Provident Bank*, Civil Action No. 04-C-199 (Circuit Court of Mercer County, West Virginia) (predatory mortgage lending class action settled for $8.1 million on behalf of 140 class members);

- *Hardwick v. Rent-A-Center, Inc.*, Civil Action No. 3:06-0901 (S.D. W. Va.) (class action settlement worth more than $5 million; alleging violations of state Consumer Goods Rental Protection Act);

- *Dillon v. Chase Bank*, Civil Action No. 03-C-164 (Circuit Court of Hancock County, West Virginia) ($3.3 million class action settlement for West Virginia borrowers who alleged illegal loan-servicing claims);

- *Casto v. City National Bank,* Civil Action No. 10-C-1089 (Circuit Court of Kanawha County, West Virginia) (settlement of overdraft fee class action brought under West Virginia consumer protection statute; settlement valued at $5.5 million);

- *Triplett v. NationStar Mortgage*, Civil Action No. 3:11cv238 (S.D. W. Va.) ($1.5 million loan servicing class action settlement for West Virginia class under state consumer protection statute).

- *Muhammad v. National City Mortgage Co.*, Civil Action No. 207-0423 (S.D. W. Va.) ($700,000 mortgage loan servicing settlement alleging violations of the West Virginia Consumer Credit and Protection Act);

- *Dijkstra v. Carenbauer*, Civil Action No. 5:11-CV-152 (N.D. W. Va.) ($690,000 settlement of class action against loan servicer, and $1.9 million settlement with loan originator).

Work of Counsel in Identifying, Investigating, and Prosecuting Claims in this Action

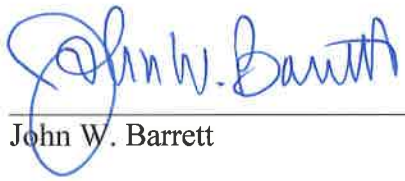
8. The worked performed by my firm and my co-counsel in litigating Plaintiff's claims and negotiating a favorable settlement is set forth in the separate affidavit of co-counsel Edward A. Broderick.

9. My law firm keeps contemporaneous time records, and we bill our staff and attorneys at rates commensurate with their years of practice and the localities in which they practice. We seek to avoid waste and duplication of effort in all of our litigation, especially in contingent-fee litigation where we are paid only if we generate a successful outcome.

10. To date, my firm has spent 290 hours of attorney and paralegal time pursuing the claims in this case. I expect we will expend another 20-50 hours working on final approval papers, handling class member calls, and addressing other aspects of settlement administration. If objections are lodged, I would also expect to spend additional hours responding to the objections and many more hours handling any appeals, if necessary.

11. I believe that rates of $700 per hour for partners, $450 per hour for associates, and $200 per hour for paralegals are reasonable in relation to market rates in the relevant court and region for complex litigation, and also are reasonable in relation to rates my co-counsel have submitted in similar cases. Applying those rates to the work my firm performed, our lodestar to date is $121,410. Our unreimbursed expenses are $30,677. The combined total lodestar figure is $152,087.

Executed this 27th day of February, 2017.



John W. Barrett

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DIANA MEY, individually and on behalf of a class of all persons and entities similarly situated, Plaintiff, v. FRONTIER COMMUNICATIONS CORPORATION, Defendant.	Case No. 13-cv-01191 (MPS)

AFFIDAVIT OF MATTHEW P. MCCUE IN SUPPORT OF PLAINTIFF'S APPLICATION FOR ATTORNEY'S FEES, COSTS, AND INCENTIVE AWARD

1. I am submitting this declaration to describe my qualifications and the work that I and my co-counsel have done in identifying, investigating, and prosecuting claims on behalf of the class.

2. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, over 18 years of age, and competent to testify and make this affidavit on personal knowledge. I have been admitted to practice in numerous United States District Courts, as well as the First Circuit Court of Appeals and the United States Supreme Court. I am in good standing in every court to which I am admitted to practice.

Qualifications of Counsel

3. I am a 1993 honors graduate of Suffolk Law School in Boston, Massachusetts. Following graduation, I served as a law clerk to the Justices of the Massachusetts Superior Court.

I then served a second year as a law clerk for the Hon. F. Owen Eagen, United States Magistrate Judge for the District of Connecticut.

4. Following my clerkships, I was employed as a litigation associate with the Boston law firm Hanify & King. In 1997, I joined the law firm of Mirick O'Connell as a litigation associate, where I began focusing my trial and appellate practice on consumer protection law.

5. In 2002, I was recognized by Massachusetts Lawyers Weekly as one of five "Up and Coming Attorneys" for my work on behalf of consumers.

6. In 2004, I started my own law firm focusing exclusively on the litigation of consumer class actions and serious personal injury cases.

7. I have served as class counsel in more than twenty consumer class action cases. Selected summaries of these cases were included in my affidavit in support of preliminary approval of the settlement. In addition, just last month, I and my co-counsel obtained a $20.5 million jury verdict in *Krakauer v. DISH Network, LLC*, a TCPA class action in the Middle District of North Carolina.

Work of Counsel in Identifying, Investigating, and Prosecuting Claims in this Action

8. The worked performed by myself and co-counsel in litigating Plaintiff's claims and negotiating a favorable settlement is set forth in the separate affidavit of co-counsel Edward A. Broderick.

9. I keep contemporaneous time records and bill at rates commensurate my years of practice in the localities in which I practice.

10. I am familiar with the hourly rates of attorneys of similar background and experience, and my rate of $700 per hour is comparable to those rates. I have used these rates in calculating lodestar for attorneys' fee purposes in several other nationwide class actions. *See, e.g., Mey v. Interstate National Dealer Services, Inc.*, No. 14-01846 (N.D. Ga June 8, 2016)

(approving $4,200,000 settlement and attorney fee based on my hourly rate of $700); *Jay Clogg Realty Group, Inc. v. Burger King Corporation*, No. 13-cv-00662 (D. Md. April 15, 2015) (approving $8,500,000 settlement and attorney fee based on hourly my rate of $700); *Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC*, No. 11-02467 (D. Md. Feb. 12, 2015) (approving settlement of $4,500,000 and attorney fee based on my hourly rate of $700).

11. From the initial investigation of this action through the preparation of the preliminary approval documents, my firm spent 288.5 hours on this case, for a total lodestar amount of $201,950.

12. In addition, I incurred $13,569.04 in unreimbursed expenses.

Executed this 27th day of February, 2017.

/s/ Matthew P. McCue
Matthew P. McCue