CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

IAN OLSEN; ADAM HANEY; SHARON MOTLEY; and MEMARY LAROCK, individually and on behalf of all others similarly situated, Plaintiffs, v. CONTEXTLOGIC INC., Defendant.	Case No. 2019CH06737 Calendar: 6 Hon. Celia G. Gamrath

PLAINTIFFS' MOTION & MEMORANDUM IN SUPPORT OF
APPROVAL OF ATTORNEYS' FEES, EXPENSES & INCENTIVE AWARDS

Dated: November 19, 2019

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Pursuant to 735 ILCS 5/2-801 and the Court's September 24, 2019 Order, Representative Plaintiffs Ian Olsen, Adam Haney, Sharon Motley, and Memary LaRock and Class Counsel at Hedin Hall LLP and McGuire Law, P.C. respectfully move for the Court's approval of Service Awards and a Fee Award in connection with the Parties' preliminarily approved Settlement.[1]

INTRODUCTION

In this consumer class action, the Representative Plaintiffs alleged that ContextLogic Inc. ("ContextLogic") sent autodialed text-message advertisements to their cellular devices and those of numerous other similarly-situated consumers without the requisite consent, in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.

After nearly two years of litigation, involving multiple cases proceeding first in federal court and now in state court, the Parties reached a comprehensive class-wide resolution to this Action, which the Court preliminarily approved in its order dated September 24, 2019. The preliminarily approved Settlement establishes an all-cash, non-reversionary Settlement Fund in the amount of $16,000,000.00, which will be used to pay all cash-awards to Settlement Class Members, Settlement Administration Costs, Service Awards to the Representative Plaintiffs, and a Fee Award to Class Counsel. Notably, unlike most consumer class action settlements, no portion of the $16 million Settlement Fund will revert back to ContextLogic. The Settlement also provides meaningful injunctive relief to the Settlement Class, which requires ContextLogic to maintain mandatory TCPA-compliance training programs for all key marketing personnel at the company, to implement and maintain oversight procedures to ensure that all marketing personnel remain compliant with the TCPA, to conduct quarterly reviews of such marketing personnel to ensure their ongoing compliance with the TCPA, and to make enhancements to its text-message delivery systems (and ensure that its vendors do the same) to prevent any transmissions of text messages via an ATDS absent the requisite consent in the future.

[1] Unless otherwise defined herein, all capitalized terms have the same force, meaning and effect as ascribed in Section 2 ("Definitions") of the Settlement Agreement.

The Settlement's Notice Plan commenced on October 24, 2019 and Notice has been sent directly to all potential Settlement Class Members by e-mail or postal mail. To date, no Settlement Class Member has filed an objection to the Settlement, only five Settlement Class Members have submitted requests for exclusion from the Settlement, over 48,000 Settlement Class Members have already submitted claims, and tens of thousands of additional claims are expected to be submitted by Settlement Class Members between now and the February 25, 2020 claims-filing deadline.[2]

Over the past two years, Class Counsel invested over two thousand hours of time and significant resources, monetary and otherwise, investigating and litigating these claims and negotiating the Settlement on behalf of the Settlement Class – a high-risk undertaking that no other attorneys were unwilling to take on and which ultimately produced an extraordinary result for numerous consumers across the country. The Representative Plaintiffs likewise played an invaluable role in this action by assisting their counsel at every stage of the proceedings, including by providing counsel with key documents and information regarding their claims, reviewing pleadings and other filings in the case, submitting declarations during the litigation and the settlement process, staying in regular contact with counsel and abreast of the proceedings, and taking an active role in negotiating the Settlement. Class Counsel continue to devote substantial time and resources to this action on a daily basis – including overseeing the notice and administration process, fielding Settlement Class Members' inquiries concerning the Settlement (nearly 500 to date), and assisting Settlement Class Members file claims – and Class Counsel will continue to do so until the Settlement administration process concludes and all Cash Awards have been paid.

Based on the substantial amount of time and other resources that Class Counsel and the Representative Plaintiffs devoted to this matter, the significant and atypical risks faced at the outset of the case and throughout the litigation, and the excellent result ultimately obtained for the

[2] Settlement Class Members have until February 25, 2020 to submit claims, and Class Counsel has instructed the Settlement Administrator to send reminder e-mails to Settlement Class Members so that all Settlement Class Members who wish to submit claims are able to do so.

Settlement Class, the Representative Plaintiffs respectfully request that the Court award Service Awards of $5,000 to each of the four Representative Plaintiffs ($20,000 in total) and a Fee Award to Class Counsel of 37.5% of the Settlement Fund (or $6,000,000). Critically, and as proposed by the Court at the preliminary approval hearing, Class Counsel have decided to forgo seeking a fee award of 40% of the Settlement Fund (as initially contemplated), and instead request that the Court designate $400,000 (i.e., 2.5%) of the Settlement Fund as *cy pres* relief to be split equally between two worthy legal-aid recipients in the greater Chicago area of the Court's choosing ($200,000 to each recipient).

As detailed below, the requested Service Awards and Fee Award are well supported under governing Illinois law, and the requested Fee Award would both fairly compensate and adequately reward Class Counsel for performing an enormous amount of work and achieving an excellent result in a case rife with risk.

TELEPHONE CONSUMER PROTECTION ACT

The TCPA was enacted more than two decades ago in response to "[v]oluminous consumer complaints about abuses of telephone technology." *Mims v. Arrow Fin. Servs. LLC*, 132 S. Ct. 740, 744 (2012). In passing the statute, Congress specifically sought to prevent "intrusive nuisance calls" to consumers that it deemed "invasive of privacy," *see id.*, by entitling prevailing plaintiffs to a statutory damage award of $500 per violation (subject to trebling if the violation was committed willfully) as well as injunctive relief. *See* 47 U.S.C. § 227(b)(3)(A)–(C).

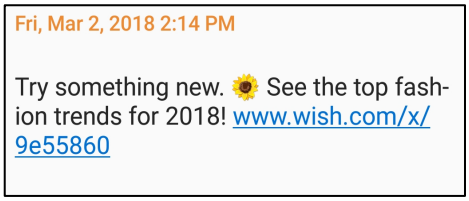
The TCPA and its implementing regulations specifically prohibit the transmission of marketing text messages to cellular phones via an "automatic telephone dialing system" (or "ATDS"), absent the "prior express written consent" of the called party. 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(2). To prove a violation of the TPCA, the plaintiff has the burden of demonstrating, inter alia, that the defendant's calls or text messages were sent via an ATDS, which is defined in the statute as any dialing equipment that "ha[s] the capacity . . . to store or produce telephone numbers to be called, using a random or sequential number generator." 47 U.S.C. § 227(a)(1) (emphasis added).

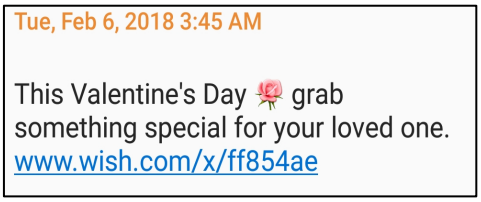
The Federal Communications Commission ("FCC") is vested with authority to issue certain interpretative regulations under the TCPA, to which courts must defer. *See, e.g., Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 674 (2016).

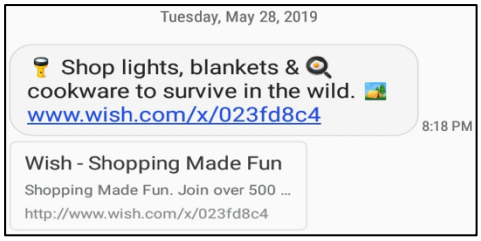
BACKGROUND

I. Nature of the Action[3]

As alleged in the Complaint, ContextLogic owns and operates several web and app-based e-commerce businesses, including its flagship marketplace Wish.com. (Compl. ¶ 8.) To build its business and market and sell products, ContextLogic transmited text-message advertisements to its customers, examples of which (received by the Representative Plaintiffs) are depicted below:





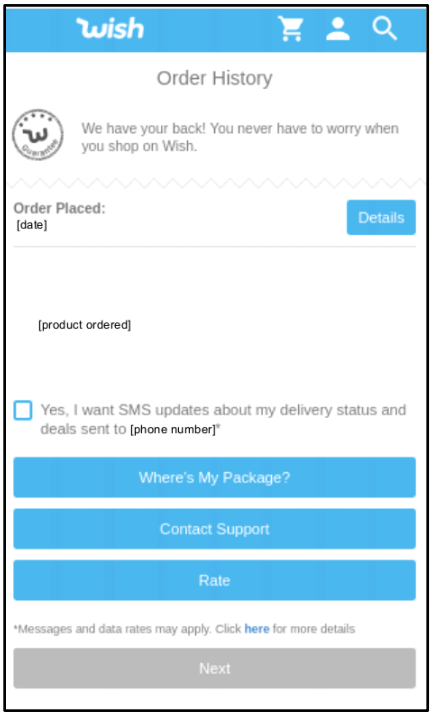


(*Id.* ¶¶ 16–19.)

As the content of the above messages makes clear, ContextLogic's text messages are sent for "telemarketing purposes" and constitute "advertisements" as defined by 47 C.F.R. 64.1200(f). (*Id.* ¶ 26.) ContextLogic uses various telephone numbers to send its text messages, including the five-digit short-code number "89293" and the 10-digit long-code number "855-894-7420". (*Id.* ¶ 20.) The Complaint alleges that ContextLogic transmits its text messages to consumers using an "automatic telephone dialing system" ("ATDS") within the meaning of the TCPA, 47 U.S.C. § 227(b)(1)(A). (*Id.* ¶ 22.) ContextLogic disputes that it has used an ATDS.

[3] This section includes allegations from Plaintiffs' Complaint.

Up until April 26, 2018, ContextLogic sent text-message advertisements to its customers, including those who, while reviewing the status of a prior order on the "order history" screen of ContextLogic's platform, checked the box shown alongside the disclosure statement in the screenshot below:



(*See Motley v. ContextLogic Inc.*, No. 3:18-cv-2117-JD (N.D. Cal.), ECF No. 17-1 at 6.)

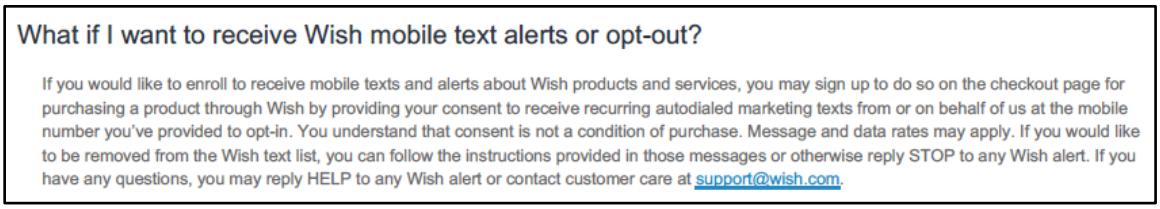
ContextLogic's business records reveal that each of the Representative Plaintiffs and Settlement Class Members began receiving ContextLogic's text-message advertisements after they had checked the box on the foregoing screen of the Wish.com platform.

The Representative Plaintiffs contend that, by checking the box on the "order history" screen shown above, they did not provide ContextLogic with TCPA-compliant "express written consent" to send them advertisements and that ContextLogic therefore violated the TCPA when it sent autodialed "advertising" text messages to them and the other Settlement Class Members. *See* Compl. ¶ 27. Specifically, the Representative Plaintiffs contend that the disclosure statement alongside the checkbox depicted above does not strictly comply with the TCPA's regulatory provisions governing "express written consent," which require, inter alia, that consumers receive

a notice that "clearly and conspicuously" discloses that an ATDS will be used to transmit "advertising" and/or "telemarketing" messages to their mobile numbers, and that consent to receive such messages is not a condition of purchasing goods or services. *See* 47 C.F.R. § 64.1200(f)(8).

Throughout the litigation ContextLogic rejected this theory and contended that the Representative Plaintiffs' claims are without merit. ContextLogic has consistently argued, among other things, that the disclosure statement shown in the screenshot above complied with the TCPA's requirements for obtaining "express written consent" because, among other reasons, the asterisk at the end of the disclosure statement (". . . sent to [phone number]*") corresponds to the following statement:

See Motley, ECF No. 17-1 at 6. Clicking the "here" hyperlink "for more details" would have directed a consumer to the "Terms of Service" webpage, which stated in pertinent part:



Id., ECF No. 17-1 at 11. According to ContextLogic, the foregoing set of disclosure statements, and the manner in which they were presented, complied with the TCPA's "express written consent" framework, such that all of the Representative Plaintiffs and Settlement Class Members provided ContextLogic their "express written consent" to receive automated text-message advertisements when they checked the box on the "order history" screen shown above. As such, ContextLogic disputes that the subject text messages were sent on an "unsolicited" basis. Further, as stated above, ContextLogic also consistently held that the equipment which it used to send the text messages at issue was not an ATDS such that it would have even needed to obtain written consent.

Thus, absent the Settlement, the outcome of this litigation would turn on whether an ATDS was used, and whether or not a consumer, by checking the box on the "order history" screen shown above, has manifested his or her "express written consent" within the meaning of the TCPA.

II. Pre-Filing Investigation

Beginning in March 2018, Plaintiffs' counsel conducted a comprehensive pre-filing investigation concerning every aspect of the factual and legal issues underlying the claims alleged in this matter. (Declaration of Frank S. Hedin, attached hereto as Exhibit A, at ¶ 18.) These extensive pre-filing efforts included, among other things:

A. Researching the nature of ContextLogic's business, including its online marketplaces operated at Wish.com and other sub-domains thereto, as well as the company's SMS text message marketing practices;

B. Interviewing dozens of recipients of ContextLogic's text messages about their use of the Wish.com platform and the text messages they received from ContextLogic; inspecting and analyzing copies of these consumers' text-message transmission histories and screenshots of the subject text messages extracted from their devices; and meticulously reviewing account registration and order confirmation e-mails and other important records reflecting their interactions with ContextLogic on the Wish.com platform;

C. Researching changes in ContextLogic's business practices over the statutory period and potential class period, including reviewing comments and public statements from ContextLogic executives concerning the company's marketing practices (and changes in those practices over the course of this period), as well as hundreds of historical postings from consumers on social media and online complaint websites concerning their receipt of ContextLogic's text messages;

D. Inspecting various publicly accessible APIs available on developer pages of ContextLogic's website and other company-maintained sites, and analyzing the methods employed by ContextLogic and the merchants that utilize these APIs to transmit SMS text messages to consumers during the statutory period;

E. Analyzing data and instructional documentation pertaining to various data files and code repositories and packages on ContextLogic's publicly accessible Github.com page, including Python modules and PHP SDKs for Wish.com merchants pertaining to mobile marketing, including text-message marketing;

F. Consulting with technical expert regarding ContextLogic's text messages and the transmission systems likely used to initiate them, as well as the short-code and long-code telephone numbers and the mobile aggregator used to deliver the text messages to consumers;

G. Performing an in-depth analysis of each of the many versions of the ContextLogic Privacy Policy, Terms of Service, and other publicly accessible documents available on ContextLogic's websites at various points in time throughout the statutory

period;

H. Researching the relevant law, assessing the likely outcome of certain appeals pertaining to the TCPA pending in the Supreme Court, the D.C. Circuit and the Ninth Circuit, and examining the pertinent facts to assess the merits of a potential TCPA claim against ContextLogic and the defenses ContextLogic could be expected to assert thereto, including the likelihood of ContextLogic successfully compelling its customers to arbitrate such disputes and/or demonstrating that its customers expressly consented in writing to receive the advertising and telemarketing text messages at issue;

I. Reviewing numerous FCC declaratory rulings and orders in effect during the statutory period, as well as then-pending FCC rulemaking proceedings and comment periods pertaining thereto, in order to gauge the likelihood of such proceedings impacting any TCPA claims brought against ContextLogic[4];

J. Surveying federal court dockets to locate and review any prior actions filed against ContextLogic under the TCPA, and carefully analyzing court filings in two such actions to identify ContextLogic's expected defenses to any TCPA action brought by Class Counsel and to gauge ContextLogic's likelihood of success on each likely defense;

K. Investigating ContextLogic's financial condition and assessing its ability to satisfy a judgment for class-wide statutory damages at trial; and

L. Exchanging extensive correspondence with Ms. Motley, meticulously reviewing various documents, communications, and ESI provided to Class Counsel by Ms. Motley concerning her potential claims against ContextLogic for violation of the TCPA, assessing the individual and class-wide viability of Ms. Motley's claims, and ultimately executing an engagement agreement with Ms. Motley concerning the prosecution of TCPA claims against ContextLogic on her behalf and on behalf of a putative class.

(Hedin Decl. at ¶ 18.)

As a result of this thorough pre-filing investigation, Plaintiffs' counsel was able to develop multiple potentially viable theories of liability for TCPA claims against ContextLogic, analyze the legal issues relevant to the merits of Plaintiffs' claims under each such theory, assess the likelihood of ContextLogic successfully compelling such claims to arbitration, and ultimately prepare complaints against ContextLogic aimed at maximizing the likelihood of certifying a class and recovering meaningful class-wide relief. (*Id.* at ¶ 14.)

III. Litigation in Federal District Court

On April 6, 2018, Plaintiff Motley filed a class action complaint against ContextLogic in

[4] *See, e.g.*, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015); *Petition for Reconsideration of Great Lakes Higher Education Corp.; Nelnet, Inc.*; *Pennsylvania Higher Education Assistance Agency; and the Student Loan Servicing Alliance*, CG Docket No. 02-278 (filed Dec. 16, 2016).

the U.S. District Court for the Northern District of California, alleging that ContextLogic had violated the TCPA by transmitting unsolicited telemarketing text messages via an ATDS to her and numerous other consumers across the country. (Hedin Decl. at ¶ 19) (citing *Motley*, ECF No. 1).

Over the following year, Class Counsel devoted substantial time and other resources vigorously litigating this matter on behalf of the Representative Plaintiffs and the Settlement Class. Class Counsel performed, inter alia, the following work during the litigation:

> A. Prepared, filed, and served a comprehensive Class Action Complaint for violation of the TCPA against ContextLogic on behalf of Representative Plaintiff Motley and a putative class of others similarly situated;
>
> B. Performed extensive post-filing investigative research and analysis regarding the appearance and technical functionality of the sign-up, checkout, and order history status-check flows on each of the various iterations of the Wish.com mobile applications for both iOS and Android devices, as well as the Wish.com web-based platform, as they existed at various points in time in the past. This work included but was not limited to (1) utilizing computer-based emulators to test every version of each of the publicly-accessible SDKs for ContextLogic's Wish.com mobile application for the Android operating system; (2) reviewing and analyzing thousands of publicly-accessible screenshots posted by consumers on message boards depicting the appearance and functionality of the iOS Wish.com mobile application at various points in the past, and (3) reviewing and analyzing cached versions of the Wish.com web-based platform accessible at various dates in the past on archive.org (a/k/a, the "Wayback Machine") to identify the methods ContextLogic used to acquire customers' telephone numbers and purportedly obtain customers' assent to its Terms of Service and the arbitration provision incorporated therein. These substantial, lengthy, and expensive investigative efforts provided Class Counsel the tools necessary to effectively oppose ContextLogic's bid to compel Representative Plaintiff Motley to arbitration;
>
> C. Protected the interests of the Settlement Class by preparing and filing notices concerning the filing of a duplicative "copy-cat" action, titled *Straczynski v. ContextLogic, Inc*., Case No. 18-cv-00855-L-NLS (S.D. Cal.), in both the *Motley* action and the *Stracyznski* action, requesting that the two cases be deemed "related" and that the second-filed *Straczynski* action be transferred to the Northern District of California for reassignment to the docket of Judge Donato, the judge presiding over the first-filed *Motley* action[5];

[5] Ultimately, prior to the issuance of a decision by either the court presiding over the *Motley* action or the court presiding over the *Stracyznski* action on whether to transfer or reassign the *Stracyznski* action, Ms. Stracyznski filed a notice of voluntary dismissal of her claims with prejudice, and without prejudice of the claims of the putative class members, in response to a motion to compel arbitration that ContextLogic filed in that action. (*See Straczynski*, ECF Nos. 10, 10-1, 10-2 (motion to compel arbitration and supporting materials filed June 8, 2018); ECF No. 15 (notice of voluntary dismissal with prejudice dated August 8, 2018).)

D. Prepared and filed a second comprehensive class action complaint in the Northern District of California on behalf of Representative Plaintiff Memary LaRock and a putative class, after having spent several weeks conducting a robust investigation into Ms. LaRock's allegations, including reviewing screenshots of the messages she had received and consulting with Ms. LaRock at length to discuss her experience and the circumstances under which she was sent ContextLogic's text messages; and thereafter prepared and filed notices of the pendency of the related *LaRock* and *Motley* actions in each action as well as a motion in the *Motley* action for the second-filed *LaRock* action to be reassigned to the docket of the judge presiding over the related first-filed *Motley* action;

E. After exhaustively researching and analyzing each of the issues and arguments raised in ContextLogic's motion to compel arbitration and dismiss, prepared and filed a comprehensive response in opposition to the motion to compel arbitration in the *Motley* action, together with supporting declarations from Class Counsel and from Ms. Motley and accompanying evidentiary submissions;

F. Attended oral argument in San Francisco, California on ContextLogic's motion to compel arbitration in the *Motley* action, where Class Counsel addressed all of the Court's questions concerning the motion and persuasively argued against the formation of any contract (i.e., the Terms of Service) between ContextLogic and Representative Plaintiff Motley (or any other ContextLogic customer) and thus against the enforceability of the arbitration provision in the Terms of Service;

G. Prepared and filed joint case management statements after conducting lengthy meetings and conferrals with ContextLogic's counsel concerning the topics set forth in Rule 26(f), and prepared and served Representative Plaintiffs' initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1);

H. Prepared and served multiple rounds of detailed discovery requests to ContextLogic concerning the merits of the Representative Plaintiffs' claims and each of the issues of class certification;

I. Prepared and served Representative Plaintiffs' responses and objections and gathered documents from the Representative Plaintiffs to be produced in response to multiple sets of comprehensive discovery requests served on the Representative Plaintiffs by ContextLogic;

J. Participated in meet-and-confer conferences over the course of several months with ContextLogic's counsel concerning the sufficiency of ContextLogic's responses and objections to Representative Plaintiffs' discovery requests, which ultimately facilitated an exchange of detailed and comprehensive responsive documents, electronically-stored information, and information bearing on the merits of the claims and on issues of class certification;

K. Negotiated mutually agreeable terms to govern the Parties' exchange of certain confidential materials in discovery in the litigation, and thereafter prepared and submitted a detailed stipulated protective order for entry by the court in the cases pending in federal court in California;

L. Meticulously reviewed and analyzed the documents and other responsive information and materials produced by ContextLogic in response to Representative Plaintiffs' discovery requests, and prepared follow-up discovery requests

to ContextLogic concerning every aspect of the merits of the Representative Plaintiffs' claims and class certification-related issues;

M. Prepared and served subpoenas to key marketing personnel at ContextLogic for relevant documents, electronically stored information, and deposition testimony;

N. Conducted lengthy conferrals with ContextLogic's counsel concerning the sufficiency of ContextLogic's Answer to certain allegations of Representative Plaintiff Motley's complaint, as well as the legal sufficiency of many of its 23 affirmative defenses asserted in its Answer; thereafter prepared a motion to strike the Answer in light of certain deficiencies Class Counsel believed existed in many of ContextLogic's 23 affirmative defenses; and finally, on the eve of filing the motion to strike, negotiated an agreement with ContextLogic's counsel whereby the Parties stipulated to the filing of an Amended Answer by ContextLogic that adequately addressed Class Counsel's concerns pertaining to its affirmative defenses;

O. Prepared a comprehensive response in opposition to ContextLogic's motions to compel arbitration and for judgment on the pleadings (on the grounds that the TCPA is unconstitutional under the First Amendment) filed by ContextLogic in the *LaRock* action, together with supporting declarations and evidentiary submissions in support of each brief – copies of which Class Counsel brought to the mediation that Class Counsel attended while these motions were pending to demonstrate that Plaintiffs were prepared to defeat the motions if a settlement was not achieved; and

P. Prepared a comprehensive response in opposition to ContextLogic's motions for judgment on the pleadings (on the grounds that the TCPA is unconstitutional under the First Amendment) and to stay pending resolution of an appeal pending before the U.S. Court of Appeals for the Ninth Circuit in *Gallion v. Charter Commc'ns, Inc.*, No. 18-55667 (9th Cir. Mar. 8, 2018) filed by ContextLogic in the *Motley* action, together with supporting declarations and evidentiary submissions in support of each brief – copies of which Class Counsel brought to the mediation that Class Counsel attended while these motions were pending to demonstrate that Plaintiffs were prepared to defeat the motions if a settlement was not achieved.

(*Id*. at ¶ 20.)

Thus, as described above, this litigation presented several complex technical issues from the outset not typically present in TCPA actions, which required significant investigative efforts to adequately address. (*Id*. at ¶ 21.) Moreover, during the litigation, ContextLogic and its capable counsel presented novel and fact-intensive defenses to the merits that are likewise not typically seen in other TCPA suits, including issues of arbitrability and consent that turned on the functionality and appearance of mobile application screens that existed at certain dates in the past and on the meaning of certain data fields extracted from ContextLogic's complex marketing

databases, as well as on the constitutionality of the TCPA under the First Amendment to the U.S. Constitution. (*Id*.)

IV. Settlement Negotiations

While ContextLogic's motions for judgment on the pleadings and to stay the litigation were pending in the *Motley* action and its motion to compel arbitration was pending in the *LaRock* action, Class Counsel and the Representative Plaintiffs agreed to attend mediation with ContextLogic and its counsel on February 28, 2019 before the Honorable Wayne R. Andersen (Ret.), a former U.S. District Court Judge for the Northern District of Illinois and JAMS mediator. (*Id*. at ¶ 22.) Class Counsel agreed to attend this mediation only after first negotiating the terms and parameters of the mediation, including certain categories of additional documents and ESI that Class Counsel needed to obtain and review prior to negotiating on behalf of the Settlement Class. (*Id*.) Thus, on January 25, 2019, the Parties stipulated to the stay of both California cases pending resolution of the upcoming mediation. (*Id*.)

In the weeks leading up to the Parties' mediation, Class Counsel at Hedin Hall LLP devoted nearly all of their time and resources preparing for the mediation, including by performing the following work:

A. Thoroughly reviewed and analyzed ContextLogic's supplemental production of key documents, electronically-stored customer marketing records, data dictionaries, and insurance coverage-related information (reflecting the absence of any applicable policies of insurance that might provide coverage to ContextLogic for liability in this litigation) that Class Counsel had required be produced by ContextLogic in advance of the mediation, as well as continued to review the other sets of documents and information produced by ContextLogic during discovery and obtained by Class Counsel in connection with their pre-filing and post-filing investigations;

B. Retained the services of an expert witness, Colin Weir of the Boston-based firm Economics & Technology, Inc., to assist Class Counsel in better understanding the meaning and scope of certain aspects of the data reflected in ContextLogic's marketing database;

C. Performed extensive legal research and analysis concerning the adequacy of ContextLogic's evidence of consent, the likelihood of prevailing on a contested motion for class certification, the size and scope of the Settlement Class, the damages potentially recoverable at trial, and ContextLogic's ability to satisfy a class-wide judgment for those damages at trial;

D. Continued to closely follow various rulemaking procedures and legislative developments pertaining to the TCPA before the FCC, Congress, and pertinent congressional committees, and stayed in regular contact with consumer advocates and lobbyists on the hill with unique insight into the likelihood of new rules or legislation being enacted that could affect this litigation;

E. Closely followed various appeals pending before the U.S. Courts of Appeals and the U.S. Supreme Court pertaining to the TCPA and other legal issues capable of affecting this litigation or the Representative Plaintiffs' ability to recover damages from ContextLogic on behalf of the Settlement Class;

F. Communicated at length with the Representative Plaintiffs concerning the upcoming mediation, their positions on settlement, and strategies to employ at the mediation;

G. Prepared and exchanged with ContextLogic's counsel a detailed mediation statement, setting forth an opening class-wide settlement demand and the basis for the demand, and reviewed and analyzed the pre-mediation position statement and other correspondence provided to Class Counsel by ContextLogic ahead of the mediation; and

H. Prepared and exchanged with Judge Andersen a comprehensive 40-page, single-spaced settlement position statement in advance of the mediation, which set forth Class Counsel's positions on each of the numerous issues of fact and law at issue in the case and a detailed analysis of the Settlement Class's likelihood of success on the merits and at class certification in the case if a settlement were not achieved at the mediation.

(*Id*. at ¶ 23.)

On February 28, 2019, following the pre-mediation preparations described above, Class Counsel attended a full-day of mediation with ContextLogic and its counsel at JAMS in Chicago, Illinois, under the supervision of Judge Andersen. (*Id*. at ¶ 24.) After over ten (10) hours of contentious, arms'-length negotiations before Judge Andersen, and in response to a mediator's proposal made by Judge Andersen late in the evening, the Parties reached an agreement on the principal components of the proposed class-wide Settlement memorialized in the Settlement Agreement presently before the Court. (*Id*.) At the conclusion of the mediation, the Parties executed a binding term sheet setting forth the material terms of the formal Settlement Agreement, subject to Class Counsel's satisfactory completion of confirmatory discovery and the Parties' selection of a Settlement Administrator. (*Id*.)

ContextLogic's counsel indicated to Class Counsel that, had this case not settled, its client would have moved for summary judgment on, inter alia, its affirmative "express written consent" defense – which, if successful, would have wiped away any entitlement of relief to the

Representative Plaintiffs and Settlement Class Members. (*Id*. at ¶ 25.) Additionally, ContextLogic's counsel indicated that, given the financial resources at the company's disposal, any final decisions favorable to the Representative Plaintiffs or the Settlement Class would have been appealed by ContextLogic. (*Id*.)

V. Confirmatory Discovery, Selecting a Settlement Administrator, and Preparing the Settlement Materials

After the mediation and in advance of formally executing the Settlement Agreement, Class Counsel continued our negotiations with ContextLogic's counsel over the remaining Settlement terms, prepared and executed an amended term sheet, initiated the proceedings in this Court to protect the interests of the Settlement Class in the wake of the Supreme Court's decision in *Frank v. Gaos*, and meticulously reviewed voluminous ESI produced by ContextLogic in the confirmatory discovery process, with the assistance of Class Counsel's retained expert Mr. Weir, and devised and oversaw a competitive Settlement Administrator selection process. (*Id*. at ¶ 26.) Specifically, between the mediation and the execution of the formal Settlement Agreement, Class Counsel performed the following work:

A. Engaged in comprehensive confirmatory discovery process, which included a meticulous review of over five (5) gigabytes of voluminous business records that ContextLogic produced to Class Counsel, which reflected the names, addresses, and e-mail addresses of all potential Settlement Class Members, as well as the dates on which each customer in the database checked the box on the "order history" screen of ContextLogic's web or mobile-based platform and the range of dates on which text messages were sent to these individuals;

B. Worked with Mr. Weir, Class Counsel's retained expert, to analyze ContextLogic's database to approximate the number of unique persons reflected in the database (a time consuming process due to the existence of many duplicative records for particular persons that are not readily identifiable), which ultimately allowed Class Counsel to verify the approximate size and scope of the proposed Settlement Class contemplated by the Settlement;

C. Worked with Mr. Weir to analyze ContextLogic's database to approximate the number of text messages that ContextLogic sent to the Settlement Class between the dates in question, and the reliability of the methodology used to gather this data and compute these figures – tasks that required Class Counsel's procurement of special software and hardware capable of reading and analyzing the records in ContextLogic's database, which is comprised of millions and millions of records;

D. Carefully confirmed other merits, class, and insurance-related details through careful analysis of materials produced by ContextLogic in the litigation and in

advance of and subsequent to the mediation;

E. Carefully studied the March 31, 2019 decision of the U.S. Supreme Court in *Frank v. Gaos*, 139 S. Ct. 1041 (2019) (vacating a federal district court's approval of a class action settlement and remanding for the district court to consider the plaintiffs' standing under Article III and thus the court's own subject-matter jurisdiction), and assessed the potential impact of the *Frank* decision on this litigation (which was in federal court in California at the time), including through lengthy discussions overseen by Judge Andersen concerning the impact of *Frank*, by performing extensive research and analysis into the nature of the claims alleged in this litigation and certain aspects of the Northern District of California's order denying ContextLogic's motion to compel arbitration of Plaintiff Motley's claims (*see, e.g., Motley*, ECF No. 43 at 5 (remarking that "[i]f the evidence ultimately shows that Motley agreed to receive the messages, a good argument might be made that she is not well-positioned to bring a TCPA claim")), and closely reviewing certain aspects of ContextLogic's records reflecting the Plaintiffs' and Settlement Class Members' interactions on the Wish.com platform prior to the transmission of the text messages in question;

F. Prepared and executed with ContextLogic's counsel an amendment to the term sheet previously executed at mediation to include, inter alia, an agreement to dismiss and re-file the litigation in this state-court forum in light of the decision in *Frank* and its impact on the litigation then-pending in federal court;

G. Negotiated a tolling agreement in connection with the dismissal and refiling of the Representative Plaintiffs' claims (also memorialized in the Parties' amendment to the term sheet) in order to protect the Settlement Class Members' claims from any statute of limitations-based defenses that could potentially arise in connection with the refiling of the case in the Circuit Court of Cook County, Illinois should final approval not be granted there;

H. Prepared, executed, and filed stipulations of dismissal without prejudice in the *Motley* and *LaRock* actions pending in the Northern District of California, subject to the refiling of those claims in a consolidated complaint filed in a proper state court jurisdiction, pursuant to the amended term sheet executed between the Parties;

I. Coordinated a competitive bidding process to select a Settlement Administrator, in which three (3) nationally recognized and experienced class-action settlement administration companies submitted bids to administer the various components of the Settlement's Notice Plan, including the preparation of the Class Notices, Claim Form, and Settlement Website, overseeing the Settlement Fund, processing submitted claims, and disbursement the Settlement Fund to the Settlement Class;

J. Reviewed and analyzed each of the estimates provided by potential Settlement Administrators, including by analyzing the costs and other differences between the detailed notice and disbursement plans devised by each potential administrator, and ultimately engaged KCC, LLC ("KCC") to administer the Settlement;

K. Negotiated a maximum, not-to-exceed service fee for KCC to charge to perform all of the work administering the Settlement through a number of discussions and negotiations;

L. Negotiated the remaining terms of the Settlement Agreement with ContextLogic, including the non-monetary injunctive relief component of the Settlement, the duration of the claims-filing period, and the timing and procedure for ContextLogic to

deposit the Settlement Fund and for the Settlement Administrator to disburse the Settlement Fund to claiming Settlement Class Members upon final approval;

M. Separately negotiated each detail of the exhibits to the Settlement Agreement, and meticulously drafted and refined, through multiple rounds of revisions, the Class Notices, the Claim Form, the form and the specifications for the functionality of the interactive web-based claim submission page, the form of the Settlement Website, including the content of its various pages, and the script for the interactive IVR toll-free Settlement telephone number to ensure that each of these materials is easily understood by Settlement Class Members and fully comply with due process and all requirements of Section 2-801;

N. Drafted and executed the formal Settlement Agreement after several rounds of back-and-forth revisions by the Parties; and

O. Prepared and filed the operative consolidated Class Action Complaint on behalf of Representative Plaintiffs Olsen, Haney, Motley, and LaRock in the Circuit Court of Cook County, Illinois, County Department of the Chancery Division, and prepared and executed a waiver of service form for ContextLogic to file in the Action pursuant to Illinois Code of Civil Procedure Section 2-213 in order to afford the Parties time to complete the confirmatory discovery process, select a Settlement Administrator, and prepare the formal Settlement Agreement.

(*Id*. at ¶ 26.)

VI. Obtaining Settlement Approval and Implementing the Notice and Settlement Administration Plan

Following the Parties' execution of the Settlement Agreement and the Representative Plaintiffs' commencement of this action in Cook County, Illinois Circuit Court, Class Counsel has continued to devote a substantial amount of time and other resources towards securing approval of the Settlement, overseeing the administration of the Settlement together with the Settlement Administrator, and fielding Settlement Class Member inquiries concerning the Settlement and the claims-filing procedure.[6] (*Id*. at ¶ 27.) The work performed by Class Counsel in connection with the Settlement-approval process has included:

A. Preparing and filing the Motion for Preliminary Approval of the Settlement, together with the supporting exhibits and declarations of Class Counsel and the proposed order granting the Motion, and traveling to and attending the hearing on the Motion held before the Court on September 24, 2019;

[6] According to statistical reports provide by KCC as of November 19, 2019, the publication notice plan has to date resulted in 133,360 unique visits to the Settlement Website, 7,950 calls to the toll-free Settlement telephone number, 48,023 claims that have been received by the Settlement Administrator (~94% of which request payment by check and ~6% of which request payment by Wish Cash), and there have been no objections and only five requests for exclusion filed to date.

B. Reviewing and making important modifications to the proposed content and functionality of the online claims-filing portal built by the Settlement Administrator on the Settlement Website to ensure that the portal is consistent with the specifications agreed upon by the Parties and approved by the Court;

C. Meticulously testing and reporting all bugs that were identified with the functionality of the claims-filing portal on the Settlement Website built by the Settlement Administrator, including by submitting numerous test claims with each possible combination of selections that Settlement Class Members could choose once the Settlement Website became live and the claims period commenced;

D. Coordinating the production of the relevant ContextLogic database files to the Settlement Administrator, and, together with Class Counsel's expert Mr. Weir, assisting the Settlement Administrator convert these database files into a more workable form to allow the Settlement Administrator to extract the e-mail and postal addresses reflected in the database and to disseminate the Class Notice to such addresses upon the Court's entry of the Preliminary Approval Order;

E. Reviewing and approving the proposed e-mail notices including subject lines to be sent to Settlement Class Members, which was carefully drafted to reduce the number of e-mails sent to the "spam" folders in the inboxes of Settlement Class Members, and reviewing and approving the proposed content of reminder e-mail notices sent to Settlement Class Members, consistent with the language used in the original e-mail notice sent to all Settlement Class Members; and

F. Fielding nearly 500 Settlement Class Member inquiries concerning the Settlement. To date, over 200 e-mails have been sent by Settlement Class Members to Class Counsel's firm, and over 200 telephone calls have been placed by Settlement Class Members to Class Counsel's firm. In response to these inquiries, pursuant to the terms of the Settlement and this Court's order preliminary approving the Settlement, Class Counsel has answered Settlement Class Members' questions concerning the Settlement, advised Settlement Class Members of their right to file a claim, objection, and a request for exclusion under the Settlement, directed Settlement Class Members to the Settlement Website for additional information concerning the Settlement, walked Settlement Class Members through the process of filing claims online, advised Settlement Class Members of the projected per-claimant recovery under the Settlement, and e-mailed and mailed copies of the Settlement Agreement and Class Notice to Settlement Class Members. Numerous Class Member inquires continue to be received, and Class Counsel continues to respond to each of them, on a daily basis, and Class Counsel expects this will continue until the conclusion of the Settlement approval process.

(*Id*. at ¶ 27.)

Class Counsel anticipate that it will expend a substantial amount of additional time (at least 80-140 additional hours in Class Counsel's best estimation) and other resources on behalf of the Settlement Class between now and the end of the Settlement-approval process in this case. (*Id*. at ¶ 28.) The future work that Class Counsel anticipate performing includes preparing a motion for final approval of the Settlement, preparing responses to any objections to the Settlement that may be filed, traveling to and attending the final approval hearing set for January 7, 2020, responding

to future Settlement Class Member inquiries that continue to be received on a daily basis, reviewing any claims rejected as invalid or incomplete by the Settlement Administrator, advocating on behalf of any Settlement Class Members who submit claims that Class Counsel believe have been wrongfully rejected, ensuring that all Cash Awards are promptly paid to all claiming Settlement Class Members after the Settlement becomes final (including ensuring that ContextLogic deposits all Wish Cash awards into the Wish.com accounts of Settlement Class Members who selected the Wish Cash option on their claim form), and ensuring that ContextLogic implements all changes in business practices and oversight procedures to fully effectuate the injunctive relief component of the Settlement and that the company otherwise complies with all terms of the Settlement Agreement upon its final approval. (*Id*.)

TERMS OF THE SETTLEMENT

A copy of the Settlement Agreement is attached as Exhibit 1 to the Hedin Decl., the key terms of which are summarized as follows:

I. Settlement Class Definition

In its preliminary approval order, the Court provisionally certified the following Settlement Class:

> All persons within the United States who, between April 6, 2014 and the Preliminary Approval Date, used or subscribed to a wireless or cellular service and were sent one or more text message(s) from ContextLogic Inc. or text messages related to a ContextLogic Inc. e-commerce market place promoting the sale of goods or services by ContextLogic Inc. or an affiliate, subsidiary, or agent of ContextLogic Inc.

Settlement Agreement § 2.1.46; Preliminary Approval Order at ¶ 2.[7]

[7] The following are excluded from the Settlement Class: (1) any trial judge and other judicial officers who may preside over this case; (2) the Mediator; (3) ContextLogic, as well as any parent, subsidiary, affiliate or control person of ContextLogic, and the officers, directors, agents, servants or employees of ContextLogic; (4) any of the Released Parties; (5) any Settlement Class Member who has timely submitted a Request for Exclusion by the Opt-Out Deadline; (6) any person or entity who has previously given a valid release of the claims asserted in the Action; (7) Plaintiffs' Counsel; and (8) any person for whom ContextLogic has a record demonstrating that the person elected on or after April 26, 2018 to receive automated advertising or marketing text messages from ContextLogic Inc. and that the first of any such message(s) sent by ContextLogic Inc. to such person occurred after such election was made. Settlement Agreement § 2.1.45.

II. Monetary Relief

ContextLogic has agreed to pay cash in the amount of $16,000,000.00, on a non-reversionary basis, to establish the Settlement Fund for the benefit of Settlement Class Members. The Settlement Fund will be used to pay all Settlement costs, including all Settlement Shares to Settlement Class Members, all Settlement Administration Costs to KCC, and a Fee Award to Class Counsel and Service Awards to the Representative Plaintiffs, and will be in full satisfaction of all of ContextLogic's monetary obligations under the Settlement and Settlement Agreement. Settlement Agreement § 4.1.

After Settlement Administration Costs and any Fee Award and Service Awards have been paid from the Settlement Fund, each Settlement Class Member who submits a valid claim will receive a pro rata Settlement Share from the remainder of the Settlement Fund.[8] *Id.* § 4.2.1; *see also id.* § 4.2.2-4.2.8 (timing of and process for payment distribution). Even if as many as 200,000 Settlement Class Members submit Valid Claims – as estimated given the expected claims rate – each Approved Claimant is expected to receive a cash payment of between approximately $45.00 and $50.00. Regardless of the number of Valid Claims submitted, no portion of the Settlement Fund will revert back to ContextLogic. *Id.* § 4.2.7.

Further, ContextLogic has agreed to provide an additional voucher good for $10.00 off any purchase of goods of $20.00 or more on a ContextLogic marketplace to each Approved Claimant who elects to receive their Settlement Share by direct deposit as Wish Cash into their Wish.com account – on top of the Settlement Class Member's pro rata Settlement Share from the $16 million fund. *Id.* § 4.2.1.

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[8] Any uncashed or undeliverable check funds will be deposited into the Wish.com accounts of those Settlement Class Members who failed to cash the Benefit Checks delivered to them or could not be delivered Benefit Checks. *See* Settlement Agreement § 4.2.4 (concerning undeliverable check funds); *id.* § 4.2.5 (concerning uncashed check funds). No Settlement Shares will revert back to ContextLogic. *Id.* § 4.2.7.

III. Non-Monetary Relief

Finally, ContextLogic has agreed to implement and maintain changes to its practices going forward, to ensure compliance with the TCPA. Settlement Agreement § 12.1. Specifically, ContextLogic has agreed to implement the following policies, procedures, and changes in its business practices as of the Preliminary Approval Date:

- Institute mandatory TCPA compliance training programs for all key marketing personnel at the company;
- Implement and maintain adequate oversight procedures to help ensure that the company's text-message marketing personnel remain compliant with the TCPA in the future;
- Conduct quarterly reviews of such marketing personnel to ensure their ongoing compliance with the TCPA; and
- Make enhancements to its text-message delivery systems (and to ensure that its vendors do the same) in order to prevent any transmissions of text messages via an "automatic telephone dialing system" unless the recipients have provided the requisite level of consent.

Id.

IV. Notice Plan and Claims Process

ContextLogic has agreed to pay from the Settlement Fund all Settlement Administration Costs. *See* Settlement Agreement §§ 6.1-6.2. As directed by the Preliminary Approval Order, on October 24, 2019 KCC completed sending notice by e-mail, and by U.S. postal mail to any Settlement Class Members for whom e-mail addresses are unavailable. Settlement Agreement § 6.5.3; Preliminary Approval Order at ¶ 25; Hedin Decl. at ¶ 27 n.4. KCC has also established the website, www.wishtcpasettlement.com, which has to-date received over 133,000 unique web sessions. (Hedin Decl. at ¶ 27 n.4.) The Settlement Website provides information about the Settlement and make case-related documents available for download, such as the Settlement Agreement, Long-Form Notice, Claim Form, Preliminary Approval Order, and the Fee and Cost Application and Application for Service Awards. (*Id.*) Settlement Class Members are also able to file claims electronically on a straightforward, easy-to-understand web-based form on the

Settlement Website; on this form, each Settlement Class Member will be able to select the method of payment for their Settlement Share – either by Benefit Check or Wish Cash – and provide the address to which their Benefit Check should be sent or the e-mail address associated with the ContextLogic account into which their Wish Cash Benefit should be deposited. (*Id.*; *see also id.,* Ex. A (online claim form)). Attesting to the quality of the notice program negotiated and developed by Class Counsel, to date over 48,000 class members have already filed claims. (*Id.* at ¶ 27 n.4.) To date, no Settlement Class Members have objected to the Settlement and only five have requested exclusion from the Settlement. (*Id.*)

V. Service Awards and Fee Award

ContextLogic has agreed to pay from the Settlement Fund a Court-approved Service Awards to the Representative Plaintiffs and Fee Award to Class Counsel. *Id.* §§ 5.1–5.2. The amounts of any Service and Fee Awards were not part of the Parties' negotiation of the terms of the Settlement or Settlement Agreement. *Id.* §§ 5.1–5.2. The Settlement Agreement provides for Class Counsel to request Service Awards to each of the Representative Plaintiffs and a Fee Award to Class Counsel (inclusive of all out-of-pocket litigation costs expended by Class Counsel prosecuting this litigation). The Class Notices all inform Settlement Class Members of the maximum Service Awards and Fee Award that the Representative Plaintiffs and Class Counsel may request. *See* Settlement Agreement, Exs. B–C.

VI. Release

Upon the Court's entry of the Final Approval Order and Judgment, the Representative Plaintiffs and all Settlement Class Members who have not excluded themselves will have fully, finally, and forever released, relinquished, and discharged ContextLogic and the other Released Parties from the Released Claims, i.e., all claims arising from or relating to text messages by, from, and/or on behalf of ContextLogic. *See* Settlement Agreement §§ 2.1.38–2.1.39, 8.1.

THE REQUESTED SERVICE AWARDS SHOULD BE APPROVED

Because a named plaintiff is essential to any class action, service awards, also known as incentive awards, "are "justified when necessary to induce individuals to become named

representatives." *Spano v. Boeing Co.*, No. 06-cv-743, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016) (internal citation omitted) (approving incentive awards of $25,000 and $10,000 for class representatives); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (noting that incentive awards "are not atypical in class action cases . . . and serve to encourage the filing of class actions suits"). Additionally, by lending their names to this litigation, the Representative Plaintiffs opened themselves up to "scrutiny and attention," which in and of itself "is certainly worthy of some type of remuneration." *See Schulte*, 805 F. Supp. 2d at 600–01.

In this case, the Representative Plaintiffs are well-deserving of a modest $5,000 Service Award given the vital and significant role that each of them played in this litigation. Even though no award of any sort was promised to any of the Representative Plaintiffs prior to the suit being filed or at any time thereafter (*see* Olsen Decl. at ¶ 7; Haney Decl. at ¶ 7; Motley Decl. at ¶ 7; LaRock Decl. at ¶ 7), each of them nonetheless contributed their own time and effort in pursuing these claims on behalf of the Settlement Class—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. (*See* Olsen Decl. at ¶ 2-3; Haney Decl. at ¶ 2-3; Motley Decl. at ¶ 2-3; LaRock Decl. at ¶ 2-3.) The Representative Plaintiffs participated in the investigation of the action and provided their personal cell phone records and screenshots of the subject text messages they received to Class Counsel to aid in their investigation and the preparation of the pleadings, participated in discovery and the litigation, reviewed pleadings and court filings, consulted with Class Counsel on numerous occasions, and provided feedback on a number of other filings including, most importantly, the Settlement Agreement. (*See* Olsen Decl. at ¶ 4; Haney Decl. at ¶ 4; Motley Decl. at ¶ 4; LaRock Decl. at ¶ 4; Hedin Decl. at ¶ 14; Hall Decl. at ¶ 15.) But for the Representative Plaintiffs' willingness to bring this action on a class-wide basis, to assist Class Counsel with their investigation and the litigation, and to remain actively involved and engaged in the case up through settlement and beyond, the Settlement and the substantial benefits it provides to the Settlement Class would likely not have been possible. (*See* Hedin Decl. at ¶ 15; Hall Decl. at ¶ 16.)

Further, the modest amount of the Service Award requested by each Representative Plaintiff – $5,000 – is well within the range of reasonableness for such an award in a class action of this nature. In fact, the $5,000 Service Award requested for each Representative Plaintiff equates to just 0.0003% of the total Settlement Fund—far less than the amount of the average incentive award granted in class actions. *See, e.g., Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-cv-4462, U.S. Dist. LEXIS 35421, at *19 (N.D. Ill. Mar. 23, 2015) ("a study on incentive awards for class action plaintiffs (also conducted by Eisenberg and Miller) . . . found that the mean incentive fee granted in class actions overall is .161% [of the total recovery]") (citing Eisenberg & Miller, *Incentive Award to Class Action Plaintiffs: An Empirical Study*, 53 U.C.L.A. L.Rev. 1303, 1339 (2006)). In fact, courts routinely approve service awards in amounts far exceeding the amount sought here. *See, e.g., Craftwood Lumber Co.*, U.S. Dist. LEXIS 35421, at *20 (awarding $25,000 incentive award); *Murray et al v. Bill Me Later, Inc.*, No. 12-cv-04789, Dkt. 78 (awarding $30,000 incentive awards to both class representatives).

Accordingly, a Service Award of $5,000 to each Representative Plaintiff (for a total of $20,000 for all four Representative Plaintiffs) is fair and reasonable and should be approved.

THE REQUESTED FEE AWARD SHOULD BE APPROVED

Class Counsel respectfully request the Court's approval of a Fee Award to Class Counsel of 37.5% of the Settlement Fund (or $6,000,000). As discussed below, the requested Fee Award is fair and reasonable in light of the work performed by Class Counsel and the recovery secured on behalf of the Settlement Class.

I. Class Counsel Should be Awarded the *Ex Ante* Market Rate for the Legal Services they Performed for the Benefit of the Settlement Class

Courts strongly encourage negotiated fee awards in class action settlements. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorneys' fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of the fee"). As such, it is well-settled that attorneys who, by their efforts, create a common fund for the benefit of a class are entitled to reasonable compensation for their services. *See Wendling v. S. Ill. Hosp. Servs.*, 242

Ill.2d 261, 265 (2011) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole")). "The Illinois Supreme Court has adopted the approach taken by the majority of federal courts on the issue of attorney fees in equitable fund cases," *Baksinski v. Northwestern Univ.*, 231 Ill. App. 3d 7, 13 (1st Dist. 1992) (citing *Fiorito v. Jones*, 72 Ill.2d 73 (1978)), which is to permit "attorneys for the successful plaintiff [to] directly petition the court for the reasonable value of those of their services which benefited the class." *Id.* at 14 (citing *Fiorito*, 72 Ill.2d 73). This rule "is based on the equitable notion that those who have benefited from litigation should share in its costs." *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) (*citing Skelton v. Gen. Motors Corp*., 860 F.2d 250, 252 (7th Cir. 1988)).

"In deciding fee levels in common fund cases" such as the instant matter, courts must "'do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.'" *Sutton v.*, 504 F.3d at 692 (quotation omitted). In performing this inquiry, the Illinois Supreme Court has determined that "a trial judge has discretionary authority to choose a percentage[-of-the-fund] or a lodestar method[.]" *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill.2d 235, 243–44 (1995)). Under the percentage-of-the-fund approach, the attorneys' fees awarded are "based upon a percentage of the amount recovered on behalf of the plaintiff class." *Brundidge*, 168 Ill.2d at 238. When applying the lodestar approach, the attorneys' fees to be awarded are calculated by determining the total amount of hours spent by counsel in order to secure the relief obtained for the class at a reasonable hourly rate, multiplied by a "weighted" "risk multiplier" that takes into account various factors such as "the contingency nature of the proceeding, the complexity of the litigation, and the benefits that were conferred upon the class members." *Id.* at 240.

II. The Court Should Apply the Percentage-of-the-Fund Method in this Case

In this case, the Court should use the percentage of the fund method in determining an appropriate Fee Award to Class Counsel.

In "choosing between the percentage and lodestar approaches," courts "look to the calculation method most commonly used in the marketplace at the time such a negotiation would have occurred." *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500–01 (N.D. Ill. 2015); *see also McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 814–15 (E.D. Wis. 2009).

And in consumer litigation, where "the normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery," *Kolinek*, 311 F.R.D. at 500–01, state and federal courts in Illinois and throughout the country are in near unanimous agreement that the percentage-of-the-fund approach best yields the fair market price for the services provided by counsel to the class. *See Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 2006) ("When the prevailing method of compensating lawyers for similar services is the contingent fee, then the contingent fee *is* the 'market rate'"); *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923 (1st Dist. 1995) (noting that "a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases") (citation omitted); *In re Continental Illinois Securities Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (market for legal services paid on a contingency basis shows the proper percentage to apply in a class action that creates a common fund for the benefit of the class)); *Williams v. Gen. Elec. Capital Auto Lease*, 94 C 7410, 1995 WL 765266, *9 (N.D. Ill. Dec. 26, 1995) (noting that "[t]he approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred upon the class"); *see also, e.g., Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (explaining that where "a class suit produces a fund for the class," as is the case here, "it is commonplace to award the lawyers for the class a percentage of the fund," and affirming fee award of 38% of $20 million recovery to class) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984)); *Sutton*, 504 F.3d at 693 (directing district court on remand to consult the market for legal services so as to arrive at a reasonable percentage of the common fund recovered); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 794 (N.D.

Ill. 2015) ("[T]he court agrees with Class Counsel that the fee award . . . should be calculated as a percentage of the money recovered for the class.").

This Court should likewise calculate Class Counsel's Fee Award using percentage-of-the-fund method. The percent-of-the-fund method best replicates the *ex ante* market value of the services that Class Counsel provided to the Settlement Class. It is not just the typical method used in contingency-fee cases generally, *see Gaskill*, 160 F.3d at 363, but it is also the means by which an informed Settlement Class and Class Counsel would have established counsel's fee *ex ante*, at the outset of the litigation. *See Kolinek*, 311 F.R.D. at 500–01 (in the TCPA context, "the normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery"); *see also* Hedin Decl. ¶ 39 ("Hedin Hall LLP devoted a significant portion of its total time and resources to this litigation over the past two years and, as a result, was forced to forgo representing consumers in other matters that we otherwise would have taken on. My firm would not have prosecuted this action absent the prospect of obtaining a percentage of the fund to account for the risk inherent in this type of class action."). The percentage-of-the-fund method also better aligns Class Counsel's interests with those of the Settlement Class because it bases the fee on the results the lawyers achieve for their clients rather than on the number of motions they file, documents they review, or hours they work, and it avoids some of the problems the lodestar-times-multiplier method can foster (such as encouraging counsel to delay resolution of the case when an early resolution may be in their clients' best interests). *Brundidge*, 168 Ill.2d at 242; *Florin*, 34 F.3d at 566; *Synthroid*, 264 F.3d at 720-21.[9] And it is also simpler to apply. *Id*.; *see also, e.g., Kolinek*, 311 F.R.D. at 501 (percentage of the ultimate recovery method appropriate for awarding fees in TCPA class action "because fee arrangements based on the lodestar method require plaintiffs to monitor counsel and ensure that counsel are working efficiently on an hourly basis,

[9] In this case for example, a lodestar approach would have encouraged Class Counsel to reject or delay entering into the Settlement offer set forth in the Settlement Agreement merely to bill more hours through more unnecessary, wasteful, and inefficient litigation—an approach that, had it been adopted by Class Counsel, could have resulted in no recovery to the Settlement Class Members.

something a class of nine million lightly-injured plaintiffs likely would not be interested in doing"); *Ryan*, 275 Ill. App. 3d at 924.

Accordingly, Class Counsel respectfully requests that the Court adopt the percentage-of-the-fund approach in determining an appropriate Fee Award in this case.

III. The Court Should Approve a Fee Award to Class Counsel of 37.5% of the Settlement Fund, and Should Award 2.5% of the Settlement Fund to two Worthy *Cy Pres* Recipients

In terms of the percentage to award, Class Counsel respectfully requests a Fee Award of 37.5% of the Settlement Fund, and that 2.5% of the Settlement Fund be designated as *cy pres* relief to be split between two worthy recipients of the Court's choosing.

As a threshold matter, a fee award of 37.5% of the Settlement Fund is well within the range of fees typically approved by Illinois courts in consumer class action settlements generally.[10] *See, e.g., Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97-cv-7694, U.S. Dist. LEXIS 20397, at *10 (N.D. Ill. Dec. 10, 2001) (noting that a "customary contingency fee" ranges "from 33 1/3% to 40% of the amount recovered") (citing *Kirchoff*, 786 F.2d at 324); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 599 (N.D. Ill. 2011) (same); *Meyenburg v. Exxon Mobil Corp.*, No. 05-cv-15, U.S. Dist. LEXIS 52962, at *5 (S.D. Ill. July 31, 2006) ("33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation"); *see also* Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 15.83 (William B. Rubenstein ed., 5th ed.) (noting that, generally, "50% of the fund is the upper limit on a reasonable fee award from any common fund").

In fact, in state and federal courts in Illinois, including in Cook County Circuit Court, 40% of the settlement fund has regularly been awarded to class counsel in consumer class action settlements. *See, e.g., Zepeda v. Intercontinental Hotels Group, Inc.*, No. 18-CH-2140 (Cir. Ct.

[10] Although typically awarded in addition to the requested fee award, in this case Class Counsel do not seek reimbursement of their out-of-pocket litigation expenses on top of the requested 37.5% Fee Award. *See, e.g., Kaplan v. Houlihan Smith & Co.*, No. 12-cv-5134, U.S. Dist. LEXIS 83936, at *12 (N.D. Ill. June 20, 2014) (awarding expenses "for which a paying client would reimburse its lawyer"); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation).

Cook Cnty., Ill. 2018) (awarding 40% of common fund to class counsel as fee award in consumer class action settlement); *Svagdis v. Alro Steel Corp.* (Cir. Ct. Cook County, 17-CH-12566 (Cir. Ct. Cook County, Ill., 2018) (same); *Zhirovetskiy v. Zayo Group, LLC,* 17-CH-09323 (Cir. Ct. Cook County, Ill., 2019) (same); *McGee v. LSC Communications, Inc. et al.*, No. 17-CH-12818 (Cir. Ct. Cook County, Ill., 2019) (same); *Sekura v. L.A. Tan Enters.*, No. 2015-CH-16694 (Cir. Ct. Cook Cty. Dec. 1, 2016) (same).

Significantly, in TCPA class action settlements in Cook County Circuit Court in particular, class counsel who secures a non-reversionary settlement fund is typically awarded a fee of around 40% of the settlement fund paid by the defendant, whereas class counsel who secures a reversionary settlement fund is typically awarded a fee of between 33% and 35% of the total settlement fund "made available" to the class. *Compare, e.g., Willis v. iHeartMedia In*c., No. 2016-CH-02455, August 11, 2016 (Ill. Cir. Ct. Cook Cnty.) (awarding class counsel fee of 40% of non-reversionary settlement fund in a TCPA class action), *and Clark v. Gannett Co., Inc.*, No. 16 CH 06603 (Cir. Ct. Cook Cty. Nov. 14, 2016) (approving a 39% of non-reversionary $13.8 million common fund TCPA class action settlement), *with Sterk v. Path, Inc*., No. 2015-CH-08609 (Cir. Ct. Cook Cnty, Ill.) (awarding class counsel 35% of reversionary settlement fund in a TCPA class action), *and Sawyer et al. v. Stericycle, Inc. et al.*, No. 2015-CH-07190 (Cir. Ct. Cook County) (awarding class counsel 33% of settlement fund in a TCPA class action).

Thus, in a case such as this, where counsel has secured a $16 million non-reversionary common fund for the Settlement Class, a fee award in the range of 39-40% of the fund would be typical in Cook County Circuit Court. Accordingly, Class Counsel's request for a Fee Award of 37.5% of the non-reversionary Settlement Fund (inclusive of costs) in this case is squarely within (and in fact on the low end of) the range of reasonableness for an award of attorneys' fees in connection with this particular type of settlement.

Moreover, further underscoring the reasonableness of the requested 37.5% Fee Award in this case is the fact that here, unlike in many TCPA class action settlements, Class Counsel (1) faced numerous significant risks at the outset of the case, and nonetheless assumed those risks by

expending substantial time and other resources investigating, prosecuting, and resolving the case; and (2) achieved an excellent result that will provide *meaningful* relief ($16 million on a non-reversionary basis) to the Settlement Class Members.

A. This was High Risk and Undesirable Litigation, and Class Counsel Should be Rewarded for Having Devoted Substantial Time and Other Resources to it on Behalf of the Settlement Class

First, the requested Fee Award is particularly in this case reasonable given the risks associated with the case at the time it was commenced. As noted by the U.S. District Court for the Northern District of Illinois in *In re Capital One*, "the average TCPA case carries [just] a 43% chance of success." 80 F. Supp. 3d at 806. However, this litigation was even riskier than usual given ContextLogic's numerous potentially meritorious defenses and the shifting regulatory and legislative landscape with respect to the TCPA that existed at the outset of the case.

First, at the time Class Counsel commenced the litigation in the Northern District of California in April 2018, the D.C. Circuit Court of Appeals had already issued its decision in *ACA Int'l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018) vacating the FCC's July 2015 decision broadly interpreting the term ATDS, and multiple U.S. Courts of Appeals thereafter began issuing post-*ACA Int'l* opinions interpreting the term ATDS so narrowly that, under the reasoning of those decisions, ContextLogic's dialing technology was certainly outside of the TCPA's reach. (Hedin Decl. ¶ 30.) Additionally, at the time Class Counsel commenced this litigation in the Northern District of California, an appeal was pending before the U.S. Court of Appeals for the Ninth Circuit (in *Marks v. Crunch of San Diego*) where the Ninth Circuit was called upon to interpret the meaning of the term ATDS in light of the D.C. Circuit's decision in *ACA Int'l*; most observers believed that the Ninth Circuit was likely to issue a decision in accord with the prior decisions from the federal circuit courts of appeals and interpret ATDS narrowly enough to exempt most text-message dialing technologies like the one used by ContextLogic here. (*Id.*) Thus, at the time Class Counsel investigated this matter and initiated this litigation, there was a significant risk that the claims alleged would no longer be viable once the Ninth Circuit issued its controlling decision on the meaning of the term ATDS in *Marks*. (*Id.*)

On September 20, 2018, over five months after Class Counsel initiated this litigation in the Northern District of California, and to just about everyone's surprise, the Ninth Circuit issued an opinion in *Marks v. Crunch of San Diego*, 904 F.3d 1041 (9th Cir. 2018) broadly interpreting the term ATDS, breaking with the reasoning of every post-*ACA Int'l* circuit court of appeals that had previously decided the same issue. (*Id.* ¶ 31.) And although rehearing *en banc* was subsequently sought by the appellee in *Marks* and later denied by the Ninth Circuit, a circuit split had formed regarding the term ATDS and it quickly appeared that either (1) the FCC would issue an agency rule-making interpreting ATDS in a manner favorable to ContextLogic that would trump *Marks* and control on the ATDS question nationwide, *see, e.g., Public Notice on Interpretation of the Telephone Consumer Protection Act* (CG Docket No. 18-152; CG Docket No. 02-278); or (2) the Supreme Court would grant certiorari in a case where the Court might resolve the circuit split on the meaning of the term ATDS in a manner that would be favorable to ContextLogic, *see, e.g., Facebook, Inc. v. Duguid*, No. 19-511 (9th Cir.) (petition for writ of certiorari pending in which petitioner asks Supreme Court to resolve circuit split on interpretation of ATDS). (Hedin Decl. ¶ 31.) Thus, from the outset of this case continuing up until the Parties reached the Settlement, there existed a substantial risk that the relevant ATDS law would evolve in ContextLogic's favor and absolve the company of liability in this action, leaving the Representative Plaintiffs and Settlement Class Members without causes of action under the TCPA and entitled to no relief (and consequently leaving Class Counsel unpaid for their work and without reimbursement for their costs). (*Id.*)

Second, as Class Counsel's pre-filing investigation revealed, ContextLogic's "Terms of Service" contained an arbitration provision and an incorporated class-action waiver purporting to require that all claims arising from or relating to the Wish.com service (including TCPA claims) be brought in individual arbitration. (*Id.* ¶ 32.) The Representative Plaintiffs and Settlement Class Members are ContextLogic customers who have accounts on the Wish.com platform. In the litigation, ContextLogic moved to compel Representative Plaintiffs Motley and LaRock to arbitration on the grounds that they (and all other Wish.com customers) had agreed to the Terms

of Service (and its incorporated arbitration provision) by enrolling with and continuing to use Wish.com. (*Id*.) The presence of the arbitration provision in the Wish.com Terms of Service was thus an enormous litigation risk at the outset of this case given the strong policy favoring the enforceability of arbitration agreements under the Federal Arbitration Act. (*Id*.) Class Counsel was keenly aware of this risk at the outset, accepted this case nonetheless, and defeated ContextLogic's motion to compel arbitration by successfully arguing that neither the Representative Plaintiffs nor any other Wish.com customers (including the Settlement Class Members) had assented to the Terms of Service while enrolling with Wish.com or otherwise interacting with the platform given the form of the disclosure statement and functionality of the sign-up and check-out flows. (*Id*.) The arguments Class Counsel raised in this regard were fact-intensive, required hundreds of hours of investigative work (performed by Class Counsel both before and after filing suit) to develop, and were difficult to win. (*Id.*)

Third, even beyond the arbitration issue, ContextLogic had strong "express written consent" defenses to the claims alleged in this case, both at the outset and for the duration of the litigation. (*Id.* ¶ 34.) Specifically, ContextLogic produced business records in discovery showing that the Representative Plaintiffs and all Settlement Class Members had all checked a box on the "order history" screen of ContextLogic's web or app-based platform, alongside a statement that ContextLogic contends complied with the TCPA's "express written consent" disclosure requirements. (*Id*.) During the course of the litigation, ContextLogic's counsel indicated to Class Counsel that the company intended to move for summary judgment on this defense if the case did not resolve. (*Id*.) Although Class Counsel and the Representative Plaintiffs disagreed that the statement complied with the TCPA, the Court could easily have disagreed, in which case ContextLogic would have prevailed on its affirmative "express written consent" defense, the Settlement Class would have recovered nothing, and Class Counsel would have received no payment for their services. (*Id*.) The relative strength of ContextLogic's "express written consent" defense to the Representative Plaintiffs' and Settlement Class Members' claims made this litigation extraordinarily risky for Class Counsel to take on at the outset and to vigorously

prosecute on a class-wide basis for the next year. (*Id*.)

Fourth, as Class Counsel knew at the outset of this case, certifying a class on a contested basis in this litigation would have been a difficult task. (*See id.* ¶ 35.) Indeed, during the litigation, ContextLogic steadfastly maintained, inter alia, that individual issues among Settlement Class members would predominate and preclude class certification. (*See id*.) For example, ContextLogic indicated that it would have opposed a contested motion for class certification by arguing that Settlement Class Members cannot be reliably identified in its records, and that variations across the content and context of its text messages present certain individualized issues among Settlement Class Members. (*Id*.) While Class Counsel believe that the Settlement Class meets all requirements for class certification, Class Counsel nonetheless understood, at the outset of the case, that a court could easily deny class certification on any number of grounds on a contested basis, in which case there would have been no recovery by the Settlement Class and consequently no recovery of fees by Class Counsel. (*See id*.) *See, e.g., Vigus v. S. Illinois Riverboat/Casino Cruises, Inc.*, 274 F.R.D. 229, 238 (S.D. Ill. 2011) (denying class certification in TCPA case); *see also Jamison v. First Credit Servs., Inc.*, 290 F.R.D. 92, 106–7 (N.D. Ill. 2013) (same and collecting authorities).

Finally, ContextLogic's counsel indicated during the course of the litigation that, had the case progressed, ContextLogic would have committed the substantial resources at its disposal to defending and litigating this matter at every stage of the proceedings, including through trial and appeal if necessary. (Hedin Decl. ¶ 35.) In addition to the defenses described above, Class Counsel were advised that, absent the Settlement, ContextLogic would have sought a decision (and appealed any adverse decision) on its motion for judgment on the pleadings on the grounds that the TCPA constitutes an impermissible restriction on free speech in violation of the First Amendment, and would have moved to stay the litigation pending resolution of various FCC rulemaking proceedings pertaining to the ATDS element of the statute. (*Id*.)

In considering the reasonableness of a fee request in a contingency class action settlement, courts consider how the legal market would have assessed the case's risk and at its inception and, in turn, how the market's risk assessment would have affected a hypothetical *ex ante* fee

negotiation between counsel and potential client. *See Goodell v. Charter Communications, LLC*, No. 08-cv-512-bbc, 2010 WL 3259349, at *1 (W.D. Wis. Aug. 17, 2010) ("The question is not how risky the case looks when it is at an end but how the market would have assessed the risks at the outset"). Here, Class Counsel began their pre-filing investigation into this matter in March 2018, at which time there were no other TCPA claims being prosecuted against ContextLogic by any other counsel. (Hedin Decl. ¶ 33.) As discussed above, ContextLogic's Terms of Service had an arbitration provision and a class-action waiver that required individual arbitration of all disputes relating in any way to the Wish.com service, including the claims alleged in this case, and it appears this litigation was viewed as simply too risky to pursue by other counsel. (*See id*. ¶¶ 30-33; *see also id.* ¶ 20(C) n.3.) Although Class Counsel and the Representative Plaintiffs plowed forward nonetheless, defeated ContextLogic's motion to compel arbitration, and negotiated the $16 million non-reversionary Settlement presently before the Court, in determining whether to meet Class Counsel's fee at the outset of this case, the Settlement Class would have known that no other firm had come forward to offer its services in this matter to the class or individual participants. (*See id.* ¶ 33.) Moreover, after Class Counsel commenced the litigation, no other counsel came forward to compete with Class Counsel for control of the case, to propose to the Court that it be appointed lead counsel at a lower fee structure, or to offer to share in the case's risk and expense with Class Counsel.[11] (*See id.* ¶¶ 33 & 20(C) n.3.)

The market thus judged this to be a high-risk case. Competition for control is brisk when lawyers think cases have significant potential to generate large recoveries and significant attorney's fees. *See In re Synthroid Marketing Litig.*, 325 F.3d 974, 979 (7th Cir. 2003). Thus, as Judge Easterbrook once observed: "Lack of competition not only implies a higher fee but also

[11] However, shortly after Class Counsel filed the *Motley* action in California, which commenced this litigation, another attorney filed *Straczynski v. ContextLogic, Inc.,* Case No. 18-cv-00855-L-NLS (S.D. Cal.), alleging the same TCPA claims against ContextLogic that were alleged in *Motley*. (Hedin Decl. ¶¶ 20(C) n.3 & 33.) *Straczynski* was a short-lived copy-cat case, however, as it was quickly voluntarily dismissed in response to a motion to compel arbitration filed by ContextLogic – a motion which raised the same arguments that Class Counsel ultimately defeated in the *Motley* action.

suggests that most members of the . . . bar saw this litigation as too risky for their practices." *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013). That is exactly the circumstance here. Other attorneys and firms chose to pass on offering representation to Settlement Class members in this case because they found it not worth the risk, firmly establishing that Class Counsel would have been able to obtain the requested fee of 37.5% of the net Settlement Fund in an *ex ante* negotiation with the Settlement Class.

Moreover, despite the many serious risks of non-recovery to the Settlement Class and thus non-payment to Class Counsel described above, both at the outset and for the duration of the adversarial proceedings, Class Counsel nevertheless expended over two thousand hours of attorney time and tens of thousands of dollars in out-of-pocket costs and expenses investigating, prosecuting, and resolving the claims alleged in this case without any guarantee of reimbursement. (Hedin Decl. ¶ 38.) In fact, Hedin Hall LLP devoted a significant portion of its total time and resources to this litigation over the past two years and, as a result, was forced to forgo representing consumers in other matters that we otherwise would have taken on. (*Id.* ¶ 39.) It was these lengthy, time-consuming efforts that made the Settlement possible. (*Id.* ¶ 38.) Class Counsel should be rewarded for accepting the Representative Plaintiffs' cases and devoting such a substantial amount of time and resources investigating and prosecuting their claims on a class-wide basis in the face of the foregoing risks, many of which (especially the threshold arbitration motion that turned on many technical and fact-intensive issues) are not typically present in TCPA litigation. (*See id.* ¶¶ 36-37, 42.)

B. The Outstanding Result that Class Counsel Achieved for the Settlement Class Further Supports the Requested Fee Award

Although this matter presented numerous atypical risks of non-recovery to the Settlement Class and thus non-payment to Class Counsel at the outset, Class Counsel confronted those risks head, ultimately achieving an excellent result for the Settlement Class. Indeed, this Settlement is believed to be one of the largest – if not the largest – all-cash, non-reversionary TCPA settlements ever filed in Cook County, Illinois Circuit Court.

As set forth above, pursuant to the Settlement Agreement, ContextLogic has agreed to establish a $16,000,000 cash Settlement Fund from which each claiming Settlement Class Member will receive a pro rata share (after first deducting all Settlement Administration Expenses, Service Awards and a Fee Award, and a *cy pres* award of $400,000 designated by Class Counsel to two *cy pres* recipients for the betterment of the greater Chicago legal aid community). Settlement Agreement § 4.1. Regardless of the number of claims submitted, none of the $16 million Settlement Fund will revert back to ContextLogic. *Id.*

Although the Claims Deadline is not until February 25, 2020, as of November 19, 2019, Settlement Class Members have already submitted over 48,000 claims. Of the over 48,000 Settlement Class Members who have submitted claims to date, approximately 94% have opted to receive their Settlement Payment by check and approximately 6% have opted to receive their Settlement Payment in the form of Wish Cash. (Hedin Decl. ¶ 27 n.4.) Even if as many as 200,000 Settlement Class Members ultimately submit claims, and assuming the requested Fee Award is approved, the projected per-claimant award (approximately $45 to $50) will be on the high end of per-claimant recoveries in similar TCPA settlements. *See, e.g., In re Capital One*, 80 F. Supp. 3d at 786 (approving TCPA class action settlement providing $34.60 cash to each settlement class member); *Kolinek*, 311 F.R.D. at 493 (approving TCPA class action settlement providing approximately $30.00 cash to each settlement class member); *Garret*, *et al. v. Sharps Compliance, Inc.*, Case No. 10-cv- 04030 (N.D. Ill. Feb. 23, 2012) (approving TCPA class action settlement providing between $27.42 and $28.51 cash to each settlement class member); *Soukhaphonh v. Hot Topic, Inc.*, No. 16-cv-5124-DMG, ECF Nos. 253 & 244 at 2 (C.D. Cal. July 26, 2019) (approving TCPA class action settlement providing approximately $2.44 to $6.17 per settlement class member); *Hashw v. Dept. Stores Nat'l Bank*, 182 F. Supp. 3d 935, 940–43 (D. Minn. 2016) (approving TCPA class action settlement providing $33.20 cash to each settlement class member). Thus, by any measure, the Settlement provides meaningful compensation to numerous consumers nationwide and is an excellent outcome for the Settlement Class.

Finally, Class Counsel note that, in addition to the monetary compensation that Class Counsel have obtained for the Settlement Class Members, the Settlement also provides meaningful injunctive relief to the Settlement Class, requiring ContextLogic to maintain mandatory TCPA-compliance training programs for all key marketing personnel at the company, to implement and maintain oversight procedures to ensure that all marketing personnel remain compliant with the TCPA, to conduct quarterly reviews of such marketing personnel to ensure their ongoing compliance with the TCPA, and to make enhancements to its text-message delivery systems (and ensure that its vendors do the same) to prevent any transmissions of text messages via an ATDS absent the requisite consent in the future. Settlement Agreement § 12.1. Given the scope of ContextLogic's business and number of customers that it has across the country, the injunctive relief provided by the Settlement will have an especially meaningful impact on the privacy of American consumers and should drastically reduce the number of text messages sent to individuals who did not expressly consent in writing to receive them. The presence of such robust non-monetary injunctive in a settlement is also useful in determining whether the fee award being sought is reasonable. *See Spano*, 2016 WL 3791123, at *1 ("A court must also consider the overall benefit to the Class, including non-monetary benefits, when evaluating the fee request") (citing *Beesley v. Int'l Paper Co.*, No. 06-cv-703, 2014 U.S. Dist. LEXIS 12037, at *5 (S.D. Ill. Jan 31, 2014)).

Class Counsel respectfully request that the Court approve a Fee Award of 37.5% of the Net Settlement Fund. For the reasons set forth above, the requested 37.5% Fee Award would both adequately reward and reasonably compensate Class Counsel for assuming the significant risks that this case presented at the outset and for nonetheless expending a substantial amount of time and other resources investigating, litigating, and negotiating a resolution to the case for the benefit of the Settlement Class over the course of nearly two years. *See, e.g., Willis*, No. 2016-CH-02455 (awarding class counsel fee of 40% of non-reversionary settlement fund in a TCPA class action in Cook County Circuit Court); *Clark*, No. 16-CH-06603 (approving a 39% of non-reversionary $13.8 million common fund TCPA class action settlement in Cook County Circuit Court).

CONCLUSION

For the foregoing reasons, Representative Plaintiffs and Class Counsel respectfully request that the Court approve Service Awards to the Representative Plaintiffs of $5,000 each (totaling $20,000), approve a Fee Award of 37.5% of the Settlement Fund (or $6,000,000) to Class Counsel, and designate two worthy legal-aid organizations in the greater Chicago area as *cy pres* recipients to each receive $200,000 (for a total of $400,000 in *cy pres*, which equates to 2.5% of the Settlement Fund) to use in furtherance of their charitable purposes.

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Respectfully submitted,

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