

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SEBASTIAN CORDOBA, individually and)
on behalf of all others similarly situated,)
Plaintiff,)

v.)

DIRECTV, LLC, individually and as)
successor through merger to DIRECTV,)
Inc.,)
Defendant.)

CIVIL ACTION FILE NO.:

1:15-CV-03755-MHC

The Honorable Mark Cohen

**PLAINTIFF'S UNOPPOSED MOTION FOR
CERTIFICATION OF THE SETTLEMENT CLASS, AND FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	iii
II. SUMMARY OF THE SETTLEMENT	2
III. ARGUMENT	3
A. The Settlement is Fair, Reasonable, and Adequate and Should Be Approved.	5
1. Rule 23(e)(2)(A): The Class Representative and Class Counsel Vigorously Represented the Classes.....	5
2. Rule 23(e)(2)(B): The Settlement Resulted from Informed Arm’s-Length Negotiations.	6
3. Rule 23(e)(2)(C): The Relief under the Settlement is Outstanding.	7
a. Rule 23(e)(2)(C)(i): The Relief Provided for the Class is Substantial, Particularly in Light of the Costs, Risks, and Delay of Trial and Appeal.	8
b. Rule 23(e)(2)(C)(ii): The Settlement Claims Process was effective.....	11
c. Rule 23(e)(2)(C)(iii): The Terms of the Proposed Award of Attorneys’ Fees puts Class Members first.....	12
d. Rule 23(e)(2)(C)(iv): There are no undisclosed side agreements.....	13
4. Rule 23(e)(2)(D): The Settlement treats Class Members equitably.....	13
B. The IDNC Settlement Class Should Be Certified.....	13
1. The IDNC Settlement Class Meets the Requirements of Rule 23(a).....	14
a. The IDNC Settlement Class is Sufficiently Numerous.....	14
b. There Are Common Questions of Law and Fact.....	14
c. The Class Representative’s Claims Are Typical.....	15
d. Plaintiff and Class Counsel Are More Than Adequate.	16

TABLE OF CONTENTS

(continued)

	<u>Page</u>
2. The IDNC Settlement Class Meets Rule 23(b)(3)'s Requirements.	17
a. Common Issues of Law and Fact Predominate.	17
b. Class Treatment Is Superior.	19
C. The Notice Plan Satisfied the Requirements of Rule 23 and Due Process.	19
IV. CONCLUSION	21

TABLE OF AUTHORITIES**Page****Cases**

<i>Adams v. S. Farm Bureau Life Ins. Co.</i> , 493 F.3d 1276 (11th Cir. 2007)	20
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997)	19
<i>Bennett v. Behring Corp.</i> , 737 F.2d 982 (11th Cir. 1984)	4, 10
<i>Burrow v. Forjas Taurus S.A.</i> , No. 16-21606, 2019 WL 4247284 (S.D. Fla. Sept. 6, 2019)	5, 13
<i>Camden I Condo Ass’n, Inc. v. Dunkle</i> , 946 F.2d 768 (11th Cir. 1991)	8, 12
<i>In re Capital One TCPA Litig.</i> , 80 F. Supp. 3d at 787	9
<i>Carriuolo v. Gen. Motors Co.</i> , 823 F.3d 977 (11th Cir. 2016)	17
<i>In re Checking Account Overdraft Litig.</i> , 307 F.R.D. 656 (S.D. Fla. 2015)	15
<i>Cordoba v. DirecTV, LLC</i> , 320 F.R.D. 582 (N.D. Ga. 2017)	14, 15, 16, 19
<i>Cordoba v. DIRECTV, LLC</i> , 942 F.3d 1259 (11th Cir. 2019)	12, 14, 18
<i>Cross v. Wells Fargo Bank, N.A.</i> , No. 15-1270, Dkt. 45-1 (N.D. Ga. Aug. 11, 2016)	8
<i>In re Domestic Air Transp. Antitrust Litig.</i> , 148 F.R.D. 297 (N.D. Ga. 1993)	9
<i>Drazen v. Pinto</i> , 74 F.4th 1336 (11th Cir. 2023) (<i>en banc</i>)	14, 18
<i>In re Equifax Inc. Customer Data Sec. Breach Litig.</i> , 999 F.3d 1247 (11th Cir. 2021)	4
<i>Faught v. Am. Home Shield Corp.</i> , 668 F.3d 1233 (11th Cir. 2011)	20
<i>George v. Acad. Mortg. Corp. (UT)</i> , 369 F. Supp. 3d 1356 (N.D. Ga. 2019)	6

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
<i>Grogan v. Aaron’s, Inc.</i> , No. 18-cv-2821-JPM, Dkt. 115 (N.D. Ga. Oct. 8, 2020)	9
<i>Gumm v. Ford</i> , 2019 WL 479506 (M.D. Ga. Jan. 17, 2019)	6
<i>Ingram v. The Coca-Cola Co.</i> , 200 F.R.D. 685 (N.D. Ga. 2001)	7
<i>Kolinek v. Walgreen Co.</i> , 311 F.R.D. 483 (N.D. Ill. 2015)	9
<i>Kuhr v. Mayo Clinic Jacksonville</i> , 530 F. Supp. 3d 1102 (M.D. Fla. 2021)	7
<i>Malta v. Fed. Home Loan Mortg. Corp.</i> , 2013 WL 444619 (S.D. Cal. Feb. 5, 2013)	9
<i>Markos v. Wells Fargo Bank, N.A.</i> , No. 15-1156, Dkt. 34-1 (N.D. Ga. June 29, 2016)	8
<i>Pinon v. Daimler AG</i> , 2021 WL 6285941 (N.D. Ga. Nov. 30, 2021) (Cohen, J.) <i>aff’d</i> , 2023 WL 8183241	10
<i>Ponzio v. Pinon</i> , 87 F.4th 487 (11th Cir. 2023)	4, 10
<i>Prather v. Wells Fargo Bank, N.A., et al.</i> , No. 15-4231, Dkt. 35-2 (N.D. Ga. Feb. 22, 2017)	8
<i>Roundtree v. Bush Ross, P.A.</i> , No. 14-357, 2015 WL 5559461 (M.D. Fla. Sept. 18, 2015)	20, 21
<i>In re Tri-State Crematory Litig.</i> , 215 F.R.D. 660 (N.D. Ga. 2003)	15
<i>Wilkins v. HSBC Bank Nev., N.A.</i> , 2015 WL 890566 (N.D. Ill. Feb. 27, 2015)	9
<i>Williams v. Mohawk Indus., Inc.</i> , 568 F.3d 1350 (11th Cir. 2009)	15
<i>Williams v. Wells Fargo Bank</i> , 280 F.R.D. 665 (S.D. Fla. 2012)	15
Statutes	
Telephone Consumer Protection Act, 47 U.S.C. § 227(c)	<i>passim</i>

TABLE OF AUTHORITIES
(continued)

Page

Federal Rules

Fed. R. Civ. P. 23	4, 20
Fed. R. Civ. P. 23(a).....	14, 15, 16, 17
Fed. R. Civ. P. 23(b)	14, 17, 20
Fed. R. Civ. P. 23(c).....	20, 21
Fed. R. Civ. P. 23(e).....	<i>passim</i>
Fed. R. Civ. P. 23(f)	6
Fed. R. Civ. P. 23(g)	16, 17

Other Authorities

2018 Advisory Committee Notes to Federal Rule of Civil Procedure	
23 amendments	4, 5

I. INTRODUCTION

Plaintiff Sebastian Cordoba respectfully moves the Court for certification of the IDNC Settlement Class and final approval of a nationwide class action settlement (“Settlement”) reached with Defendant DIRECTV, LLC (“DIRECTV”).¹ Mr. Cordoba alleges that DIRECTV, through Telecel Marketing Solutions, Inc. (“Telecel”), placed unsolicited telemarketing calls to Plaintiff and Settlement Class Members in violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227(c).

After eight years of hard-fought litigation, summary judgment for DIRECTV, and a cross-appeal to the Eleventh Circuit, the Parties negotiated in good faith and reached a Settlement. The Settlement resolves Mr. Cordoba and Settlement Class Members’ TCPA claims for an all-cash, non-reversionary common fund of \$440,000. Settlement Class Members who filed qualified claims will receive a pro-rata cash payment (after deductions for cost of notice, claims administration, and Court-awarded attorneys’ fees and costs). This is a strong result, underscored by the fact that not a single Class Member objected or opted out. Declaration of Carole Thompson, CPT Group (“CPT Decl.”), ¶ 11.

Mr. Cordoba and Class Counsel submit that this Settlement is fair, reasonable, and adequate, and an outstanding result for the Classes—particularly considering

¹ Unless otherwise stated, all capitalized terms in this motion carry the same meaning as defined in the Settlement. *See* Dkt. 285-1 (“Agmt.”).

that the Court already ordered summary judgment against Mr. Cordoba and the risks Mr. Cordoba faced on appeal. Mr. Cordoba respectfully requests that the Court, after the fairness hearing scheduled for May 17, 2024, certify the IDNC Settlement Class for settlement purposes, grant approval, and enter judgment so Class Members can obtain relief expeditiously.

II. SUMMARY OF THE SETTLEMENT

The Settlement requires DIRECTV to create a non-reversionary cash settlement fund of \$440,000 to compensate the NDNC class and IDNC Classes. The previously certified NDNC Class is defined as “All persons residing within the United States whose telephone numbers were on the National Do Not Call Registry, but who received more than one telephone call between October 27, 2011 and March 3, 2016 from Telecel on behalf of DIRECTV for the purpose of selling or attempting to sell DIRECTV’s goods and/or services.” Agmt. § 2.31. The proposed IDNC Settlement Class is defined as “All persons within the United States who received a telephone call on or after October 27, 2011 and before March 3, 2016 from Telecel on behalf of DIRECTV for the purpose of selling or encouraging the sale of DIRECTV’s goods and/or services, who asked Telecel to stop making such calls to them, and who nevertheless received more than one such call from Telecel after asking not to be called again.” *Id.* § 2.27.

The Settlement Fund will be distributed to valid claimants pro rata, after deducting the costs of notice and claims administration and attorneys' fees and expenses. *Id.* § 5.04. No money will revert to DIRECTV. *Id.* § 4.04.

Class notice was delivered via mail and email. CPT Decl. ¶¶ 8-9. Additionally, at Class Counsel's direction CPT Group sent four more email reminders. *Id.* at ¶ 9. The parties also agreed to accept any claims submitted before the May 17, 2024 hearing, rather than the present May 6, 2024 deadline. As of May 1, 2024, CPT Group received 150 valid claims; no Class Members opted out; and none objected.² *Id.* at ¶¶ 11-12. Further, the Settlement website for Class Members, www.directvtcpaclassaction.com, provides a Spanish translation option, allows Class Members to file claims, provides information about key dates, contains links to important documents, contains a Facts and Questions section with plain language answers to common Class Member questions, and contains the short- and long-form notices. *Id.* at ¶ 10.

Class Members will be bound by a release specifically tailored to the calling practices that gave rise to this matter. Agmt. at § 14.01.

III. ARGUMENT

"Settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and

² Class Counsel will provide an updated claims figure at the May 17, 2024 final approval hearing.

uncertainties and preventing lawsuits.” *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021) (quotation omitted). To grant final approval of a class action settlement, the Court must determine that the settlement agreement is “fair, reasonable, and adequate” under Rule 23(e)(2). The 2018 amendments to Rule 23 direct the Court to focus “on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal.” Fed. R. Civ. P. 23(e)(2), 2018 Adv. Cmt. Notes. Accordingly, Mr. Cordoba analyzes the Rule 23(e)(2) factors and relies on the substantially similar *Bennett* factors in the Eleventh Circuit. *See Ponzio v. Pinon*, 87 F.4th 487, 495 (11th Cir. 2023) (“four core concerns set out in Rule 23(e)(2) provide the primary considerations in evaluating proposed agreements, but we think that the *Bennett* factors can, where appropriate, complement those core concerns.”).³

Under all of the relevant factors, final approval here is appropriate. As the Court recognized in granting preliminary approval, the IDNC Settlement Class meets Rule 23(a) and (b)(3)’s requirements and should be certified. Dkt. 286, at 3.

³ The *Bennett* factors are “(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *See Ponzio*, 87 F.4th at 494 (citing *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984)).

A. The Settlement is Fair, Reasonable, and Adequate and Should Be Approved.

1. Rule 23(e)(2)(A): The Class Representative and Class Counsel Vigorously Represented the Classes

Under the first Rule 23(e)(2) factor, courts consider whether the class representatives and class counsel have adequately represented the class. Courts assessing this factor ask “whether class counsel and plaintiffs ‘had an adequate information base’ before negotiating and entering into the settlement.” *Burrow v. Forjas Taurus S.A.*, No. 16-21606, 2019 WL 4247284, at *7 (S.D. Fla. Sept. 6, 2019) (quoting Fed. R. Civ. P. 23(e)(2)(A), 2018 Adv. Cmt. Notes).

Here, Mr. Cordoba obtained Settlement after eight years of litigation, full discovery from DIRECTV and Telecel, and review of 47,425 pages of documents and extensive data files. *See* Dkt. 285-2, Declaration of Daniel M. Hutchinson ISO Motion for Preliminary Approval (“Hutchinson Decl.”) ¶ 29. Mr. Cordoba deposed key DIRECTV and Telecel employees. *Id.* ¶ 32. Mr. Cordoba likewise produced documents and sat for his deposition. *Id.* ¶ 34. Likewise, Mr. Cordoba retained experts regarding data analytics and survey metrics as part of his class certification motions. *Id.* ¶¶ 35, 44.

This case also included extensive motion practice at this Court and in the Eleventh Circuit. Mr. Cordoba twice moved for class certification, DIRECTV moved to compel arbitration, and DIRECTV moved for summary judgment. *Id.* ¶¶ 35-59. Each of those issues were appealed to the Eleventh Circuit, which denied

DIRECTV’s Rule 23(f) petition regarding certification of the NDNC class, and issued two merits opinions after full briefing and oral argument. *Id.* The litigation settled only after fully briefed cross-appeals to the Eleventh Circuit. Therefore, the Parties knew enough to assess the “probability of [their] success on the merits[,] the range of possible recovery . . . [and] the complexity, expense, and likely duration of the litigation” before negotiating the settlement. *George v. Acad. Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1369 (N.D. Ga. 2019).

Plaintiff Cordoba was likewise actively engaged throughout the litigation—providing Class Counsel with documents, responding to discovery requests, and sitting for deposition. Accordingly, the Settlement satisfies Rule 23(e)(2)(A).

2. Rule 23(e)(2)(B): The Settlement Resulted from Informed Arm’s-Length Negotiations.

Under Rule 23(e)(2)(B), the Court considers whether the Settlement was “negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(B).

Here, the Settlement was the result of a thorough, informed, fair negotiation process. The Settlement arises out of serious, informed, and non-collusive negotiations between sophisticated attorneys with a full understanding of the litigation. After a full-day April 2020 mediation was unsuccessful, Hutchinson Decl. ¶ 53, the Parties revisited arm’s-length negotiations in April 2023 in advance of the Eleventh Circuit oral argument. *Id.* ¶¶ 60-62. The Parties reached Settlement with a full understanding of the case’s factual record and procedural history. *Id.* This supports approval under this factor. *See Gumm v. Ford*, 2019 WL 479506, at *3

(M.D. Ga. Jan. 17, 2019) (agreement that was a “product of arm’s-length, adversarial negotiations between experienced and knowledgeable counsel who have prosecuted and defended this litigation for over two years” warranted approval); *Kuhr v. Mayo Clinic Jacksonville*, 530 F. Supp. 3d 1102, 1115 (M.D. Fla. 2021) (similar).

Further, the Parties negotiated attorneys’ fees for Class Counsel only after reaching agreement on the terms of relief. Hutchinson Decl. ¶ 62. This is also indicative of a fair and arm’s-length process. *See Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) (settlement not collusive where “the fee was negotiated separately from the rest of the settlement, and only after substantial components of the class settlement had been resolved”).

As this Court held in granting preliminary approval, the Settlement Agreement “appears to be the product of intensive, thorough, serious, and informed arms-length negotiations.” Dkt. 286, at 5. Accordingly, the Settlement satisfies Rule 23(e)(2)(B).

3. Rule 23(e)(2)(C): The Relief under the Settlement is Outstanding.

Rule 23(e)(2)(C) requires courts to consider whether the relief provided for the class is adequate considering the “costs, risk, and delay of trial and appeal”; “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims”; “the terms of any proposed award of attorneys’ fees, including timing of payment”; and “any agreements to be identified under Rule 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C)(i)-(iv). Each substantive

consideration is satisfied. The Settlement provides substantial relief to Class Members, delivered through a non-reversionary claims-made process, and Class Counsel's requested award of fees of no greater than \$146,666.67, applies the percentage approach required in this Circuit. *See Camden I Condo Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991).

a. Rule 23(e)(2)(C)(i): The Relief Provided for the Class is Substantial, Particularly in Light of the Costs, Risks, and Delay of Trial and Appeal.

Under Rule 23(e)(2)(C)(i), the Court must consider the “costs, risk, and delay of trial and appeal.” The Settlement—\$440,000 in non-reversionary cash—is a substantial result, particularly in light of the fact that the Court entered summary judgment against Plaintiff prior to the parties' cross-appeals. Divided by the class number list of 17,796, this amounts to \$9.37 per Class Member.⁴

This per-Class Member figure compares well with, and is in fact higher than many other TCPA settlements, including ones approved in this District. *See, e.g., Prather v. Wells Fargo Bank, N.A., et al.*, No. 15-4231, Dkt. 35-2 (N.D. Ga. Feb. 22, 2017) (\$4.65 per class member); *Cross v. Wells Fargo Bank, N.A.*, No. 15-1270, Dkt. 45-1 (N.D. Ga. Aug. 11, 2016) (\$4.75 per class member); *Markos v. Wells Fargo Bank, N.A.*, No. 15-1156, Dkt. 34-1 (N.D. Ga. June 29, 2016) (\$4.98 per class

⁴ This calculation is done as follows: the \$440,000 Settlement Fund would be reduced by roughly \$273,253.56 after deducting Settlement Costs for the Claims Administrator (\$37,000), requested attorneys' fees (\$146,666.67), and expenses (\$89,586.89). While there is overlap between the Classes, a simplified calculation of the remaining information divided by the number of Class Members is \$9.37 $((\$440,000 - \$273,253.56) / 17,796 = \$9.37)$.

member); *Grogan v. Aaron's, Inc.*, No. 18-cv-2821-JPM, Dkt. 115 (N.D. Ga. Oct. 8, 2020) (\$7.10 per class member).⁵

And the amount of money actually received by each Class Member who made a claim, after deducting Settlement Costs (and assuming that the Court grants Class Counsel's Motion for Attorneys' Fees and Expenses, Dkt. 287), is even better—approximately \$1,111.64, based on the number of valid claims as of this filing. This is simply an outstanding result for Class Members, particularly because TCPA damages are purely statutory damages, and the Class Members have relatively little out-of-pocket losses or other economic harm. *See also In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 790 (N.D. Ill. 2015) (noting that the per-claimant award “does not seem so miniscule in light of the fact that class members did not suffer any damages beyond a few unpleasant phone calls”).

Of course, the settlement amount does not constitute the full measure of statutory damages potentially available to the Classes. This fact alone, however, does not weigh against approval. *See In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 319 (N.D. Ga. 1993) (“In assessing the settlement, the Court must

⁵ *See also Wilkins v. HSBC Bank Nev., N.A.*, 2015 WL 890566, at *3 (N.D. Ill. Feb. 27, 2015) (\$2.95 per class member); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d at 787 (\$2.72 per class member); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493 (N.D. Ill. 2015) (\$1.20 per class member); *Malta v. Fed. Home Loan Mortg. Corp.*, 2013 WL 444619, at *4 (S.D. Cal. Feb. 5, 2013) (approximately \$4 per class member).

determine whether it falls within the range of reasonableness, not whether it is the most favorable possible result in the litigation.”) (internal quotation marks omitted).

With respect to the risks, expenses, and delays of continued litigation, Mr. Cordoba believes his claims against DIRECTV have merit. Nevertheless, Mr. Cordoba and the Classes would face a number of difficult challenges if the litigation were to continue on appeal. To take the most obvious, he would need the Eleventh Circuit to reverse this Court’s order granting summary judgment to DIRECTV and reverse this Court’s denial of his renewed class certification motion for the IDNC class.

Mr. Cordoba believes his appeal is meritorious. But even if he were entirely successful on his appeal, the likelihood of success at trial (and a likely fourth appeal) is uncertain. Accordingly, Mr. Cordoba’s decision to settle his claims, and the claims of Class Members, is reasonable. *See, e.g., Pinon v. Daimler AG*, 2021 WL 6285941, at *7 (N.D. Ga. Nov. 30, 2021) (Cohen, J.) *aff’d*, 2023 WL 8183241 (“continued litigation would likely involve additional significant attorneys’ fees and expenses inherent with an appeal with a final resolution potentially years later”); *Ponzio*, 2023 WL 8183241, at *4 (*Bennett* factors (1), (2), and (4) can inform whether relief provided to class is adequate).

b. Rule 23(e)(2)(C)(ii): The Settlement Claims Process was effective.

Rule 23(e)(2)(C)(ii) asks whether the methods of distribution and claims processing are effective. Class Members received direct notice of the Settlement claims process and benefits through the Court-approved notice program. CPT Decl. ¶ 8. Subsequent email reminders were sent to Class Members, including emails in Spanish given that many Class Members are native Spanish speakers. *Id.* at ¶ 9. The Settlement provides benefits to Class Members via a simple claims process. Each Class Member received information about the Settlement via the Notice Program—specifically, direct postcard notice sent to all Class Members who were located through reverse look ups. CPT Decl. ¶¶ 5-6; Agmt. §§ 5, 9.

This Settlement provides the gold standard in class member relief: non-reversionary cash payments. The claims process was designed to be accessible and straightforward, but at the same time to deter any unjustified claims without placing undue burdens on Class Members. In order for those Class Members to make a claim, they need only submit a claim through an easy-to-use online interface or downloadable claim form. Agmt. § 5.04; Agmt. Ex. E (claim form). Class Members need only certify and affirm: (1) their name; (2) the telephone number at which they received calls; (3) that they received the at-issue calls; (4) that they asked Telecel not to call them again and/or were on the NDNC; and (5) that they actually heard or were otherwise bothered by these calls. *Id.* Claimants do not need to attach *any*

documentary evidence for claims to be valid. These affirmations ensure that only proposed Class Members with Article III standing can receive cash relief from the Settlement.⁶

Given that the at-issue calls occurred several years ago, Mr. Cordoba submits that the number of claims demonstrates the success of the claims process. Therefore, the Settlement meets the considerations of Rule 23(e)(2)(C)(ii).

c. Rule 23(e)(2)(C)(iii): The Terms of the Proposed Award of Attorneys' Fees puts Class Members first.

Under Rule 23(e)(2)(C)(iii), the Court must consider whether “the terms of any proposed awards of attorneys’ fees, including timing of payment” are reasonable. Class Counsel seek reimbursement for their out-of-pocket costs in litigating this matter for the past eight years and an award of attorneys’ fees of no greater than one-third (33.33%) of the common fund, using the percentage approach required in this Circuit. *See Camden I*, 946 F.2d at 775.

Class Counsel filed a motion for fees and costs, Dkt. 285, which was posted to the Settlement Website in advance of the deadline to object. For the reasons explained in that motion, the requested fees and costs are reasonable and should be approved.

⁶ Mr. Cordoba maintains that the record already establishes that Class Members have standing because “[e]very call uses some of the phone owner’s time and mental energy, both of which are precious.” *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1269–70 (11th Cir. 2019). Nevertheless, Mr. Cordoba believes this safeguard is appropriate given DIRECTV’s assertion that Class Members who do not provide an affirmation would not have standing.

d. Rule 23(e)(2)(C)(iv): There are no undisclosed side agreements.

Under Rule 23(e)(2)(C)(iv), the Court must consider any agreements identified under Rule 23(e)(3) which requires the parties seeking approval of a class action settlement to “file a statement identifying any agreement made in connection with the proposal.” There are no agreements to disclose under Rule 23(e)(3) and the Settlement meets the considerations of Rule 23(e)(2)(C)(iv).

4. Rule 23(e)(2)(D): The Settlement treats Class Members equitably.

Finally, Rule 23(e)(2)(D) states that a court should consider whether “the proposal treats class members equitably relative to each other.” The Settlement fairly and reasonably allocates benefits among Class Members—each Class Member who submits a Claim Form and provides the required certifications will receive the same pro rata share. Courts have approved similar settlements. *See, e.g., Burrow v. Forjas Taurus S.A.*, 2019 WL 4247284, at *10 (S.D. Fla. Sept. 6, 2019) (settlement satisfies Rule 23(e)(2)(D) where “[t]here is no distinction between the benefits offered . . .”).

B. The IDNC Settlement Class Should Be Certified.

In its Preliminary Approval Order, the Court found that it would likely be able to certify the IDNC Settlement Class.⁷ Dkt. 286, at 3. Nothing has changed to call that conclusion into question. In fact, this Court previously certified the IDNC Class

⁷ This Court previously certified the NDNC Class and thus need not revisit that certification.

and its findings regarding numerosity, commonality, typicality, and adequacy were not challenged or disturbed on appeal. As to predominance under Rule 23(b)(3), the only potential issue identified on appeal can and will be addressed in the context of a negotiated settlement through the claim form’s requirement to confirm receipt of an unwanted telemarketing call. *Cordoba*, 942 F.3d at 1269-70; *see also Drazen v. Pinto*, 74 F.4th 1336, 1345 (11th Cir. 2023) (*en banc*) (“the receipt of an unwanted text message causes a concrete injury”); Agmt. Ex. E.

Mr. Cordoba briefly addresses the Rule 23(a) and (b) elements below.

1. The IDNC Settlement Class Meets the Requirements of Rule 23(a).

Rule 23(a) requires: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. *See* Fed. R. Civ. P. 23(a)(1)-(4).

a. The IDNC Settlement Class is Sufficiently Numerous.

Rule 23(a)(1) is satisfied where “the class is so numerous that joinder of all [class] members is impracticable.” Fed. R. Civ. P. 23(a)(1). Here, numerosity is satisfied because this Court previously held that there were “16,870 calls placed to numbers while Telecel did not maintain an[] IDNC list.” *Cordoba v. DirecTV, LLC*, 320 F.R.D. 582, 600 (N.D. Ga. 2017); Dkt. 286, at 3 (“IDNC Settlement Class Members are sufficiently numerous such that joinder is impracticable.”).

b. There Are Common Questions of Law and Fact.

Rule 23(a)(2) conditions certification upon there being “at least one issue

whose resolution will affect all or a significant number of the putative class members.” *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009) (citation omitted). Commonality is “generally satisfied when a plaintiff alleges that Defendants have engaged in a standardized course of conduct that affects all class members.” *In re Checking Account Overdraft Litig.*, 307 F.R.D. 656, 668 (S.D. Fla. 2015) (cleaned up). Here, this Court previously held that a common question is “whether all of the calls at issue for the IDNC class were made while Telecel did not have the required IDNC procedures in place.” *Cordoba*, 320 F.R.D. at 600; *see also* Dkt. 286, at 3 (“there are common questions of law and fact”).

c. The Class Representative’s Claims Are Typical.

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defense of the class.” *Williams v. Wells Fargo Bank*, 280 F.R.D. 665, 672-73 (S.D. Fla. 2012) (citation omitted). Typicality is satisfied here because Mr. Cordoba’s claim arises from the same course of conduct by Telecel as to all IDNC Settlement Class Members and Mr. Cordoba relies on the same legal theory as other class members. *In re Tri-State Crematory Litig.*, 215 F.R.D. 660, 690 (N.D. Ga. 2003).

As this Court previously held, “Plaintiff alleges that, like all putative class members, he received telemarketing calls from Telecel . . . while Telecel did not have procedures in place for maintaining an[] IDNC list.” *Cordoba*, 320 F.R.D. at

601; *see also* Dkt. 286, at 3 (“Plaintiff’s claims are typical of those of the IDNC Settlement Class Members”). And, Mr. Cordoba and Class Members will similarly—and equitably—benefit from the Settlement as each is entitled to a pro rata share. Typicality is satisfied.

d. Plaintiff and Class Counsel Are More Than Adequate.

Where, as here, “the representative parties will fairly and adequately protect the interests of the class,” Rule 23(a)(4) is met. Here, Mr. Cordoba sat for deposition, responded to discovery, and otherwise demonstrated that he is familiar with the facts of this case and understood his duties. Hutchinson Decl. ¶ 34. This Court previously held, “neither Plaintiff nor his counsel appear to have any interests that are antagonistic to the proposed classes.” *Cordoba*, 320 F.R.D. at 601; *see also* Dkt. 286, at 3 (“Plaintiff and Class Counsel have adequately represented, and will continue to adequately represent, the interests of the IDNC Settlement Class Members”).

Rule 23(g) requires this Court to appoint class counsel to represent the Class. The undersigned undertook an enormous amount of work, effort, and expense in bringing and litigating these cases and demonstrated their willingness to devote whatever resources were necessary. *See generally* Hutchinson Decl.; Dkt. 287-2 (Declaration of Matthew R. Wilson). They are experienced and well-qualified class

action and TCPA litigators. They respectfully request that the Court appoint them as Class Counsel pursuant to Fed. R. Civ. P. 23(g)(1).

2. The IDNC Settlement Class Meets Rule 23(b)(3)’s Requirements.

After Rule 23(a) is satisfied, the Court must determine if the Settlement satisfies one of Rule 23(b)’s subparts. Here, under Rule 23(b)(3), (i) “questions of law or fact common to class members predominate over any questions affecting only individual members”; and (ii) a class action is “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

a. Common Issues of Law and Fact Predominate.

The predominance requirement is satisfied if common issues have a “direct impact on every class member’s effort to establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member.” *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 985 (11th Cir. 2016).

Predominance is established for purposes of settlement because IDNC Settlement Class Members have submitted claims that aver that they heard or were otherwise bothered by Telecel’s calls. Agmt. Ex. E. The Settlement therefore fully and finally resolves all standing issues for IDNC Settlement Class Members who make this certification because DIRECTV agrees for purposes of settlement not to contest those facts sufficient to establish standing. This in accord with the Eleventh Circuit’s prior order, which held that the “receipt of more than one unwanted

telemarketing call made in violation of the provisions enumerated in the TCPA is a concrete injury.” *Cordoba*, 942 F.3d at 1269-70; *see also Drazen*, 74 F.4th at 1345 (“receipt of an unwanted text message causes a concrete injury”). Each IDNC Settlement Class Member received more than one unwanted telephone call. Additionally, traceability is satisfied under Article III because each valid claim states that they heard or were actually bothered by Telecel’s call. Agmt. Ex. E. This, like Mr. Cordoba’s claims, satisfies traceability because these calls “would not have happened if Telecel had maintained an internal do-not-call list and abided by it.” *Cordoba*, 942 F.3d at 1271.

The Eleventh Circuit previously considered absent class member standing and held that the class “might appropriately proceed as it is currently defined” if “there is a plausible straightforward method to sort [class members] out at the back end of the case.” *Cordoba*, 942 F.3d at 1275. To ensure that only IDNC Class Settlement Members with standing fill out a claim, the Parties have agreed for settlement purposes to a “straightforward method,” a claim form, to sort out which IDNC Settlement Class Members can and cannot satisfy Article III standing.

The Settlement ensures that IDNC Settlement Class Members have affirmed, through a sworn claim form, that they received calls, heard them, and were otherwise bothered by them. Agmt. Ex. E. Thus, there is no individualized issue of absent IDNC Settlement Class member standing. Further, Mr. Cordoba believes that this

Court's bases for finding predominance in the 2017 class certification order, where it held that common questions, such as "whether Telecel . . . called members of the putative IDNC class while it did not have procedures in place for maintaining an IDNC list" would predominate, should remain in force. *Cordoba*, 320 F.R.D. at 601-02. Predominance is satisfied.

b. Class Treatment Is Superior.

Here, this Court already considered Rule 23(b)(3)'s "non exhaustive list of four factors" in making its superiority determination. *First*, "class members are likely to have little interest in controlling the litigation in this case." *Cordoba*, 320 F.R.D. at 602 (citation omitted). *Second*, "[t]here is no evidence of any litigation begun by or against any class members here," and the same is true as of today. *Id.* *Third*, the "sheer number of class members at issue makes class-wide adjudication of Plaintiff's claims more efficient." *Id.* *Fourth*, manageability does not apply here. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there [will] be no trial."). Superiority is met.

C. The Notice Plan Satisfied the Requirements of Rule 23 and Due Process.

Rule 23(e)(1) requires that before a proposed settlement may be approved, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal" To satisfy due process, notice must "reach the parties

affected” and “convey the required information.” *Adams v. S. Farm Bureau Life Ins. Co.*, 493 F.3d 1276, 1285-86 (11th Cir. 2007) (citation omitted). For a Rule 23(b)(3) settlement class, the Court must “direct to class members the best notice that is practicable under the circumstances” Fed. R. Civ. P. 23(c)(2)(B).

“The adequacy of class notice is measured by reasonableness,” and “[t]he notice must provide the class members with information reasonably necessary to make a decision whether to remain a class member and be bound by the final judgment or opt out of the action.” *Roundtree v. Bush Ross, P.A.*, No. 14-357, 2015 WL 5559461, at *1 (M.D. Fla. Sept. 18, 2015) (quoting *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1239 (11th Cir. 2011)).

The notice program met these standards. CPT Group, a third-party claims administrator with significant experience, emailed or mailed Class Members notice and administered www.directvtcpaclassaction.com, a comprehensive Settlement Website. *See generally* CPT Decl. CPT Group also sent multiple email reminders to Class Members, including an email written primarily in Spanish. *Id.* at ¶ 9.

The Notice complied with Rule 23 and due process because it informed Class Members in English (with a Spanish translation option) of: (1) the nature of the action; (2) the essential terms of the Settlement, including the Class definitions and claims asserted; (3) the binding effect of a judgment if the Class Member does not request exclusion; (4) the process to object to, or to be excluded from, the IDNC

Settlement Class, including the time and method for objecting or requesting exclusion and that Class Members may make an appearance through counsel; (5) information regarding Class Counsel's request for an award of attorneys' fees and expenses; (6) the procedure for submitting claims; and (7) how to make inquiries and obtain additional information. Agmt. Exs. B-D; Fed. R. Civ. P. 23(c)(2)(B); *Roundtree*, 2015 WL 5559461, at *1 ("The class notice provides reasonably adequate information about the nature of the action and the class settlement, and provides sufficient details for class members to determine whether to remain in the class or opt out. Accordingly, the form and content of the class notice are approved.").

IV. CONCLUSION

Mr. Cordoba respectfully requests that the Court: (1) grant final approval of the proposed Settlement; (2) certify the IDNC Settlement Class; (3) find that Notice to the Class was directed in a reasonable manner; (4) grant Class Counsel's Motion for Attorneys' Fees and Expenses, Dkt. 287; (5) reserve jurisdiction with respect to implementation and enforcement of the terms of the Settlement; and (6) appoint Mr. Cordoba as Class Representative and Lieff Cabraser Heimann & Bernstein LLP and Meyer Wilson Co., LPA as Class Counsel.

Dated: May 3, 2024

Respectfully submitted,

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& BERNSTEIN, LLP**

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*Attorneys for Plaintiffs, the NDNC Class, and
the Proposed IDNC Class*

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1.C and 7.1.D of the Northern District of Georgia, that the foregoing was prepared in 14-point Times New Roman Font.

May 3, 2024.

/s/ Sean A. Petterson
Sean A. Petterson

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send notification of such filing to all attorneys of record.

May 3, 2024.

/s/ Sean A. Petterson
Sean A. Petterson

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SEBASTIAN CORDOBA, individually and)
on behalf of all others similarly situated,)
Plaintiff,)

v.)

DIRECTV, LLC, individually and as)
successor through merger to DIRECTV,)
Inc.,)
Defendant.)

CIVIL ACTION FILE NO.:

1:15-CV-03755-MHC

The Honorable Mark Cohen

**DECLARATION OF CAROLE THOMPSON REGARDING CPT GROUP'S
COMPLIANCE WITH CLASS NOTICE REQUIREMENT**

I, Carole Thompson, declare and state as follows:

1. I am an Associate Director at CPT Group, the Court-appointed Settlement Administrator in the above-captioned case, per the Court's Order Granting Motion for Preliminary Approval of Class Action Settlement. Dkt. 286, ¶ 11.

2. I submit this Declaration of Compliance pursuant to the Court's Order Granting Motion for Preliminary Approval of Class Action Settlement and Section 9.06 of the Class Action Settlement Agreement and Release. Dkts. 286; 285-1, at 9.06.

3. This declaration of compliance is based on my personal knowledge, as well as upon information provided to me by experienced CPT Group colleagues and Class Counsel in this Action, and if called upon to do so, I could and would testify competently thereto.

Settlement Class Member Identification

4. I oversaw CPT Group's efforts in this Action to identify Settlement Class Members. CPT Group followed each of the steps detailed in Section 5 of the Settlement Agreement.

5. The first step that CPT Group took was obtaining information from Class Counsel regarding the list of telephone numbers provided by Class Counsel

with Plaintiff's Motion for Class Certification. Agmt. § 5.01(a).

6. Next, CPT Group conducted reverse lookups to identify the individual who was the subscriber and/or user of each cellular telephone identified above. *Id.* at § 5.01(b).

Settlement Class Notice

7. The Settlement Notice Date was February 5, 2024, per the Settlement Agreement. *Id.* at §§ 2.48, 9.02.

8. To effectuate Settlement Class Notice, CPT Group took the following steps:

- a. Pursuant to Section 9.03 of the Settlement Agreement, CPT Group identified 15,487 mail and email addresses for potential Settlement Class Members. CPT Group was unable to find mailing information for 1,333 Settlement Class Members despite diligent efforts to do so.
- b. On February 5, 2024, CPT Group sent email notices to 9,746 potential Settlement Class Members and mail notice to 5,741 potential Settlement Class Members.
- c. To date, 2,241 email notices "bounced" or were undeliverable. CPT Group thereafter re-emailed 2,219 emails.
- d. To date, 320 mailed notices were returned. Of those, 65 were re-mailed and 13 were forwarded.

9. At Class Counsel's request, CPT Group sent four additional reminder emails to Settlement Class Members on March 15, April 12, April 19, and April

26. Those reminder emails also prominently included Spanish-language text as a large percentage of Settlement Class Members are native Spanish speakers.

10. Additionally, as part of notice, we launched the Settlement Website, www.directvtcpaclassaction.com. The Settlement Website contains links to key case documents, the dates for upcoming case deadlines, a description of the case, and an online portal for Settlement Class Members to submit their claims. The Settlement Website also contained Class Counsel's motion for attorneys' fees after it was filed with the Court.

Objections, Opt-Outs, and Valid Claims

11. The deadline for Settlement Class Members to object or opt-out of the Settlement was April 5, 2024. To date, CPT Group received zero objections and zero opt-outs. I understand from Class Counsel that CPT Group previously sent Rule 23 class notice to NDNC Class Members in 2018 and there were no opt-outs at that point in time either. Dkt. 170.

12. As of May 1, 2024, CPT Group received 150 valid claims from Settlement Class Members.

Notice Costs and Administrative Handling

13. The combined, approximate cost to implement the Notice Plan and handle the administration of claims and Settlement Class Member support for this

Settlement Program is approximately \$37,000.00. This includes costs for postage, paper, and other necessary direct pass-through expenses and administration fees. Attached hereto as **Exhibit A** is a true and correct copy of the bid which includes the itemized costs.

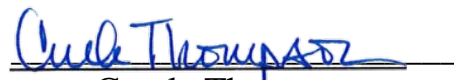
Calculation of Settlement Class Member Award Amounts

14. The Settlement Agreement contains a formula for determining the value of each pro-rata share. Agmt. § 5.04. The formula is: (Net Settlement Fund) / (Total Number of NDNC Class Member and IDNC Settlement Class Members who have made a valid and timely claim) = (Pro-rata share).

15. The Net Settlement Fund, assuming the Court grants Class Counsel's request for \$146,666.67 in attorneys' fees and reimbursement of \$89,586.89 in reasonable out-of-pocket costs, and reducing for CPT Group's costs is roughly \$166,746.44.

16. Based on the Net Settlement Fund and the number of valid claims, CPT Group anticipates that each Settlement Class Member who submitted a valid claim will receive \$1,111.64.

Executed on May 1, 2024 in Irvine, California.


Carole Thompson

by the Court's Preliminary Approval Order, and upon consideration of all papers filed and proceedings had herein, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

2. The Settlement Agreement dated November 6, 2023 including its exhibits (the "Settlement Agreement"), and the definitions of words and terms contained therein are incorporated by reference in this Order. The terms of this Court's Preliminary Approval Order are also incorporated by reference in this Order.

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227 and has personal jurisdiction over the Parties and the Settlement Class Members, including all members of both the previously certified NDNC Class and the following IDNC Settlement Class:

All persons within the United States who received a telephone call on or after October 27, 2011 and before March 3, 2016 from Telecel on behalf of DIRECTV for the purpose of selling or encouraging the sale of DIRECTV's goods and/or services, who asked Telecel to stop making such calls to them, and who nevertheless received more than one such call from Telecel after asking not to be called again.

4. The Court finds that the notice provisions set forth under the Class Action Fairness Act, 28 U.S.C. § 1715, were complied with in this Action.

5. The Court finds and concludes that Class Notice was disseminated to members of the IDNC Settlement Class and the NDNC Class in accordance with the

terms set forth in the Settlement Agreement and that Class Notice and its dissemination was in compliance with this Court's Preliminary Approval Order.

6. The Court finds that such notice (a) constituted the best notice practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of the Action, the definition of the classes certified, the class claims and issues, the opportunity to enter an appearance through an attorney if the member so desires; the opportunity, the time, and manner for requesting exclusion from the classes, and the binding effect of a class judgment; (d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, due process under the U.S. Constitution, and any other applicable law.

7. The Court hereby finds that all persons who fall within the definition of the IDNC Settlement Class have been adequately provided with an opportunity to exclude themselves from that class. All persons who submitted timely and valid requests for exclusion shall not be deemed IDNC Settlement Class Members and are not bound by this Final Approval Order. A list of those persons who submitted timely and valid requests for exclusion is attached hereto. All other persons who fall within

the definition of the IDNC Settlement Class or the NDNC Class are Settlement Class Members and shall be bound by this Final Approval Order and the Settlement.

8. The Court reaffirms that this Action is properly maintained as a class action, for settlement purposes only, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3).

9. The Court hereby finds and concludes that the IDNC Settlement Class meets the requirements of numerosity, commonality, typicality, and adequacy as set forth in Rule 23(a) of the Federal Rules of Civil Procedure. The Court further finds and concludes that the IDNC Settlement Class meets the requirements of predominance, superiority, and manageability as set forth in Rule 23(b)(3) of the Federal Rules of Civil Procedure. The Court further reaffirms its prior certification of the NDNC Class.

10. The Court hereby appoints Plaintiff Sebastian Cordoba as Class Representative to represent the IDNC Settlement Class and reaffirms its appointment of Plaintiff Cordoba to represent the NDNC Class.

11. The Court hereby appoints Class Counsel to represent the IDNC Settlement Class and to reaffirms its appointment of Class Counsel represent the NDNC Class.

12. The Court finds that the Settlement warrants final approval pursuant to Rule 23(e)(2) because the Court finds the Settlement to be fair, reasonable, and

adequate and in the best interest of the Settlement Classes, after weighing the relevant considerations. First, the Court finds that Plaintiff and Class Counsel have adequately represented the IDNC Settlement Class and the NDNC class and will continue to do so through Settlement implementation. Second, the Settlement was reached as a result of arms' length negotiations and comes after eight (8) years of litigation (including a ruling on a motion for summary judgment and briefing on multiple appeals) and a detailed and informed investigation and analysis by counsel for the parties. Third, the Court finds that the relief proposed to be provided for the Settlement Class—a non-reversionary settlement fund of \$440,000—is fair, reasonable, and adequate taking into account, *inter alia*, the costs, risks, and delay of trial and appeal, the alleged harm to Settlement Class Members, and the proposed method of distributing payments to the Settlement Class Members. Fourth, the Court finds that the Settlement treats all Settlement Class Members equitably relative to each other. Under the terms of the Settlement, all Settlement Class Members who submitted a timely and valid Claim Form will be sent a *pro rata* distribution, as specified in the Settlement, of the \$440,000 settlement proceeds after reduction of the Settlement Costs.

13. The motion is hereby GRANTED, and the Settlement and its terms are hereby found to be and APPROVED as fair, reasonable, and adequate and in the best interest of the IDNC Settlement Class and NDNC Class. The Parties and Claims

Administrator are directed to consummate and implement the Settlement in accordance with its terms.

14. This Court hereby dismisses this Action, with prejudice and without leave to amend and without costs to any Party, other than as specified in the Settlement, in this Final Approval Order, and in any order(s) by this Court regarding Class Counsel's motions for attorneys' fees, expenses, and an incentive award.

15. In consideration of the benefits provided under the Settlement, Plaintiff and each Settlement Class Member who has not requested exclusion shall, by operation of this Final Approval Order, have forever released all Released Claims against all Released Parties in accordance with Section 14 of the Settlement, the terms of which sections are incorporated herein by reference. The terms of the Settlement, which are incorporated by reference into this Final Approval Order, shall have res judicata and other preclusive effects as to the Released Claims as against the Released Parties. The Released Parties may file the Settlement and/or this Final Approval Order in any other litigation to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any similar defense or counterclaim.

16. Plaintiff and each Settlement Class Member, as well as their respective assigns, heirs, executors, administrators, successors, and agents, hereby release, resolve, relinquish, and discharge each and all of the Released Parties from each of

the Released Claims. Plaintiff and the Settlement Class Members further agree that they will not institute any action or cause of action (in law, in equity or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal or local government agency or with any administrative or advisory body, arising from or reasonably related to the Released Claims. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Order, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments. Notwithstanding the foregoing, nothing in this Final Approval Order and judgment shall preclude an action to enforce the terms of the Settlement.

17. This Final Approval Order is the final, appealable judgment in the Action as to all Released Claims.

18. Without affecting the finality of this Final Approval Order in any way, this Court retains jurisdiction over (a) implementation of the Settlement and the terms of the Settlement; (b) Class Counsel's motion for attorneys' fees, expenses, and any incentive award; (c) distribution of the Settlement Fund, Class Counsel attorneys' fees and expenses, and Plaintiff's Incentive Award; and (d) all other proceedings related to the implementation, interpretation, validity, administration,

consummation, and enforcement of the terms of the Settlement. The time to appeal from this Final Order and Judgment shall commence upon its entry.

19. In the event that the Effective Date does not occur, this Final Approval Order shall be rendered null and void and shall be vacated, *nunc pro tunc*, except insofar as expressly provided to the contrary in the Settlement, and without prejudice to the status quo ante rights of Plaintiff, Settlement Class Members, and DIRECTV.

20. The Settlement Agreement (including, without limitation, its exhibits), and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, of any liability or wrongdoing, by DIRECTV, or of the truth of any of the claims asserted by Plaintiff in the Action. Further, the Settlement Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission by DIRECTV that the Action is properly brought on a class or representative basis, or that classes may be certified for any purpose. To this end, the settlement of the Action, the negotiation and execution of the Settlement Agreement, and all acts performed or documents executed pursuant to or related to the Settlement Agreement: (i) are not and will not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of DIRECTV or of the truth of any of the allegations in the Action; (ii) are not and will

not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of DIRECTV in any civil, criminal, or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal; and (iii) are not and will not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification. Further, evidence relating to the Settlement Agreement shall not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of enforcing the terms and conditions of the Settlement Agreement, the Preliminary Approval Order, and/or this Order.

21. In the event that any provision of the Settlement or this Order is asserted by DIRECTV as a defense in whole or in part (including, without limitation, as a basis for a stay) in any other suit, action, or proceeding brought by a Settlement Class Member or any person actually or purportedly acting on behalf of any Settlement Class Member(s), DIRECTV may seek an immediate stay of that suit, action or other proceeding, which the Settlement Class Member shall not oppose, until this Court or the court or tribunal in which the claim is pending has determined any issues related to such defense or assertion. Solely for purposes of such suit, action, or other proceeding, to the fullest extent they may effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this

Court, or that this Court is, in any way, an improper venue or an inconvenient forum. These provisions are necessary to protect the Settlement Agreement, this Order and this Court's authority to effectuate the Settlement, and are ordered in aid of this Court's jurisdiction and to protect its judgment.

22. The Court awards Class Counsel attorneys' fees of \$146,666.67 (one-third of the Settlement Fund) and reimbursement of expenses in the amount of \$89,586.89, with such attorneys' fees and expenses to be paid from the Settlement Fund pursuant to the terms of the Settlement.

23. Finding that there is no just reason for delay, the Clerk of the Court is directed to enter this Order on the docket and it shall serve as final judgment pursuant to Rule 54(b) forthwith.

IT IS SO ORDERED

DATED: May__, 2024

HON. MARK A. COHEN