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1 George V. Granade (State Bar No. 316050)
2 *ggranade@reesellp.com*
3 **REESE LLP**
4 8484 Wilshire Boulevard, Suite 515
5 Los Angeles, California 90211
6 Telephone: (310) 393-0070

7 Michael R. Reese (State Bar No. 206773)
8 *mreese@reesellp.com*
9 **REESE LLP**
10 100 West 93rd Street, 16th Floor
11 New York, New York 10025
12 Telephone: (212) 643-0500

13 Sabita J. Soneji (State Bar No. 224262)
14 *ssoneji@tzlegal.com*
15 **TYCKO & ZAVAREEI LLP**
16 1970 Broadway, Suite 1070
17 Oakland, California 94612
18 Telephone: (510) 254-6808

19 Hassan A. Zavareei (State Bar No. 181547)
20 *hzavareei@tzlegal.com*
21 Gemma Seidita (State Bar No. 322201)
22 *gseidita@tzlegal.com*
23 **TYCKO & ZAVAREEI LLP**
24 2000 Pennsylvania Avenue, NW, Suite 1010
25 Washington, District of Columbia 20006
26 Telephone: (202) 973-0900

27 *Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,*
28 *and Cheryl Rowan and the Classes*

Brian A. Glasser (*pro hac vice*)
bglasser@baileyglasser.com
John W. Barrett (*pro hac vice*)
jbarrett@baileyglasser.com
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555

Rachel E. Kaufman (State Bar No. 259353)
rachel@kaufmanpa.com
Avi Kaufman (*pro hac vice*)
avi@kaufmanpa.com
KAUFMAN P.A.
237 South Dixie Highway, Floor 4
Coral Gables, Florida 33133
Telephone: (305) 469-5881

Stefan Coleman (*pro hac vice*)
lan@stefancoleman.com
LAW OFFICES OF STEFAN COLEMAN
66 West Flagler Street, Unit 900
Miami, Florida 33130
Telephone: (877) 333-9427

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SARAH BUMPUS, MICHELINE PEKER,
and CHERYL ROWAN, *individually, and on*
behalf of a class of similarly situated persons,

Plaintiffs,

v.

REALOGY HOLDINGS CORP.;
REALOGY INTERMEDIATE HOLDINGS
LLC; REALOGY GROUP LLC; REALOGY
SERVICES GROUP LLC; *and* REALOGY
BROKERAGE GROUP LLC (f/k/a NRT
LLC),

Defendants.

Case No. 3:19-cv-03309-JD

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR AWARD OF
ATTORNEYS' FEES AND COSTS AND
SERVICE AWARDS; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: August 28, 2025
Time: 10:00 a.m.
Place: Courtroom 11, 19th Floor
Judge: Honorable James Donato

1 **TO THE COURT, ALL PARTIES, AND ALL COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on August 28, 2025, at 10:00 a.m., or as soon thereafter as
3 this matter may be heard, before the Honorable James Donato in Courtroom 11, 19th Floor, located
4 at 450 Golden Gate Avenue, San Francisco, California, Plaintiffs Sarah Bumpus, Micheline Peker, and
5 Cheryl Rowan will and hereby do respectfully move for entry of an Order awarding attorneys' fees
6 and providing for payment of litigation expenses and service awards to Plaintiffs.

7 Plaintiffs base the motion on the following documents: this Notice of Motion and Motion;
8 the accompanying Memorandum of Points and Authorities; the pleadings, record, and other filings in
9 the case; the concurrently filed Declaration of George V. Granade and its accompanying exhibits; the
10 Declaration of Sabita J. Soneji and its accompanying exhibits; the Declaration of Avi Kaufman and its
11 accompanying exhibits; the Declaration of Stefan Coleman and its accompanying exhibits; the
12 Declaration of John W. Barrett; the Declaration of Sarah Bumpus; the Declaration of Micheline Peker;
13 the Declaration of Cheryl Rowan; and such other oral and written points, authorities, and evidence as
14 the parties may present at the time of the hearing on the motion.

15 Respectfully submitted,

16 Date: May 2, 2025

REESE LLP

17 By: /s/ George V. Granade
18 George V. Granade (State Bar No. 316050)
19 *ggranade@reesellp.com*
20 8484 Wilshire Boulevard, Suite 515
Los Angeles, California 90211
Telephone: (310) 393-0070

REESE LLP

21 Michael R. Reese (State Bar No. 206773)
22 *mreese@reesellp.com*
23 100 West 93rd Street, 16th Floor
New York, New York 10025
Telephone: (212) 643-0500

TYCKO & ZAVAREEI LLP

24 Sabita J. Soneji (State Bar No. 224262)
25 *ssoneji@tzlegal.com*
26 1970 Broadway, Suite 1070
Oakland, California 94612
Telephone: (510) 254-6808

TYCKO & ZAVAREEI LLP

28 Hassan A. Zavareei (State Bar No. 181547)

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28

hzavareei@tzlegal.com
Gemma Seidita (State Bar No. 322201)
gseidita@tzlegal.com
2000 Pennsylvania Avenue, NW, Suite 1010
Washington, District of Columbia 20036
Telephone: (202) 973-0900

BAILEY & GLASSER LLP

Brian A. Glasser (*pro hac vice*)
bglasser@baileyglasser.com
John W. Barrett (*pro hac vice*)
jbarrett@baileyglasser.com
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555

KAUFMAN P.A.

Rachel E. Kaufman (State Bar No. 259353)
rachel@kaufmanpa.com
Avi Kaufman (*pro hac vice*)
avi@kaufmanpa.com
237 South Dixie Highway, Floor 4
Coral Gables, Florida 33133
Telephone: (305) 469-5881

LAW OFFICES OF STEFAN COLEMAN

Stefan Coleman (*pro hac vice*)
lan@stefancoleman.com
66 West Flagler Street, Unit 900
Miami, Florida 33130
Telephone: (877) 333-9427

*Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,
and Cheryl Rowan and the Classes*

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MEMORANDUM IN SUPPORT OF MOTION FOR AWARD OF FEES AND COSTS AND SERVICE AWARDS

Bumpus v. Realogy Holdings Corp., No. 3:19-cv-03309-JD

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

After more than five years of litigating this hard-fought case against Realogy,¹ a well-defended opponent, to the eve of trial, Plaintiffs² secured a \$20,000,000 common fund for the Settlement Class. If the Court awards the requested \$6,000,000 in attorneys' fees, \$898,739.46 in costs, and Service Awards of \$5,000 per Plaintiff, as well as Settlement Administrative Expenses of \$340,000,³ \$12,746,260.54 will remain for distribution to class members,⁴ who would receive approximately \$284.67 each if there is a 15% claim rate. This is an outstanding recovery for the Settlement Class.

Plaintiffs' Counsel now request attorneys' fees equal to 30% of the Settlement Fund, which is reasonable given the substantial recovery the obtained for the class members. An upward adjustment from the 25% benchmark is appropriate not only because of the exceptional result for the class, but also because the requested award represents a *negative multiplier* of 0.62 on Plaintiffs' Counsel's lodestar of over \$9,739,959.65 for over 10,243.75 hours of work. Plaintiffs' Counsel also seek costs of \$898,739.46, which were necessarily incurred. And they ask for Service Awards of \$5,000 for each Plaintiff as an appropriate recognition of their dedication to pursuing this case for years for the class.

II. Overview of the History of the Litigation

The Declaration of George V. Granade, which includes a detailed description of factual and procedural history of the case, is an integral part of this submission. Decl. Granade ¶¶ 5-141.

III. The Requested Fee Is Fair and Reasonable

A. A Reasonable Percentage of the Fund Is the Appropriate Method for Awarding Attorneys' Fees in Common Fund Cases

Under the common fund doctrine, "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

¹ Collectively, Realogy Holdings Corp., Realogy Intermediate Holdings LLC, Realogy Group LLC, Realogy Services Group LLC, and Realogy Brokerage Group LLC are "Realogy."

² Unless otherwise indicated, capitalized terms are defined in the Settlement Agreement, filed as Exhibit 1 to the Declaration of George V. Granade in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and for Certification of Settlement Classes, ECF No. 395-2.

³ See Decl. Azari re Revised Notice Plan ¶ 19, ECF No. 401 (agreeing to \$340,000 cap).

⁴ There are 298,494 unique telephone numbers in the combined Settlement Classes. Decl. Granade ¶ 138 (filed concurrently herewith).

1 the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

2 While courts have discretion to employ either the percentage-of-the-fund method or the
3 lodestar method to assess the reasonableness of a request for attorneys’ fees, *In re Bluetooth Headset*
4 *Prods. Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011) (“*Bluetooth*”), the Ninth Circuit has consistently
5 approved the use of the percentage method in common fund cases, *see, e.g., Vizcaino v. Microsoft Corp.*,
6 290 F.3d 1043, 1047-48 (9th Cir. 2002). Indeed, “the percentage-of-the-fund method is *preferred* when
7 counsel’s efforts have created a common fund for the benefit of the class.” *In re Capacitors Antitrust*
8 *Litig.*, No. 3:14-cv-03264-JD, 2018 WL 4790575, at *2 (N.D. Cal. Sept. 21, 2018) (“*Capacitors P*”
9 (Donato, J.); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (“[U]se of
10 the percentage method in common fund cases appears to be dominant.”).

11 “The rationale behind awarding a percentage of the fund to counsel in common fund cases is
12 the same that justifies permitting contingency fee arrangements in general The underlying premise
13 is the existence of **risk**—the contingent risk of non-payment.” *Capacitors I*, 2018 WL 4790575, at *1.
14 “In addition, attorneys’ fees are awarded as a means of ensuring the beneficiaries of a common fund
15 share with those whose labors created the fund.” *Id.*; *accord In re Bard IVC Filters Prod. Liab. Litig.*, 81
16 F.4th 897, 905 n.8 (9th Cir. 2023). Courts “try to . . . [tie] together the interests of class members and
17 class counsel” by “tether[ing] the value of an attorneys’ fees award to the value of the class recovery.”
18 *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1178 (9th Cir. 2013). “The more valuable the class recovery,
19 the greater the fees award . . . [a]nd vice versa.” *Id.* at 1178-79. Use of the percentage-of-recovery
20 method is particularly appropriate in common fund cases such as this one because “the benefit to the
21 class is easily quantified.” *Bluetooth*, 654 F.3d at 942.

22 **B. An Upward Adjustment of the Ninth Circuit Benchmark Is Warranted**

23 “Courts in the Ninth Circuit applying the ‘percentage of the fund’ approach use a twenty-five
24 percent benchmark.” *Capacitors I*, 2018 WL 4790575, at *3. However, the 25% benchmark is merely a
25 starting point, as “in most common fund cases, the award exceeds that benchmark.” *In re Omnivision*
26 *Techs., Inc.*, 559 F. Supp. 2d at 1047; *Davis v. Yelp, Inc.*, No. 18-cv-00400-EMC, 2023 WL 3063823, at
27 *2 (N.D. Cal. Jan. 27, 2023) (“[A]n upwards fee multiplier [is] commonplace in complex class
28 actions.”); *see also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015) (25%

1 benchmark is “a helpful ‘starting point’”); *Vizcaino*, 290 F.3d at 1047 (20-30% is “the usual range”).

2 Plaintiffs’ Counsel’s 30% fee request is well within the range of percentage fees that courts in
3 this Circuit have awarded in other complex class actions. *See, e.g., Williams v. PillPack LLC*, No. 3:19-
4 cv-05282-DGE, 2025 WL 1149710, at *2-3 (W.D. Wash. Apr. 18, 2025) (awarding one-third of
5 settlement fund in TCPA case); *Karri v. Oclaro, Inc.*, No. 3:18-cv-03435-JD, 2024 WL 5374889, at *1
6 (N.D. Cal. July 26, 2024) (Donato, J.) (awarding one-third of fund in securities case); *Cuellar v. First*
7 *Transit Inc.*, No. 8:20-cv-01075-JWH-JDE, 2024 WL 83231, at *13 (C.D. Cal. Jan. 8, 2024) (awarding
8 30% of settlement fund in wage-and-hour case); *In re Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD,
9 2023 WL 2396782, at *1-2 (N.D. Cal. Mar. 6, 2023) (“*Capacitors IP*”) (Donato, J.) (awarding 40% of
10 \$165 million partial settlement, resulting in cumulative 31.01% award of total \$604,550,000
11 settlement); *Davis*, 2023 WL 3063823, at *2 (awarding 33% of settlement fund in securities case and
12 collecting cases awarding same percentage); *Floyd v. First Data Merch. Servs. LLC*, No. 5:20-cv-02162-
13 EJD, 2022 WL 6173122, at *2 (N.D. Cal. Oct. 7, 2022) (awarding fees of \$533,280.00 from settlement
14 fund of \$1,600,000, which was 33.33% of the fund, in TCPA case); *Andrews v. Plains All Am. Pipeline*
15 *L.P.*, No. 15-cv-04113-PSG-JEM, 2022 WL 4453864, at *2, *4 (C.D. Cal. Sept. 20, 2022) (awarding
16 32% of \$230 million settlement); *In re Lenovo Adware Litig.*, No. 15-md-02624-HSG, 2019 WL 1791420,
17 at *8-9 (N.D. Cal. Apr. 24, 2019) (awarding 30% of \$8.3 million settlement amount); *Cabiness v. Educ.*
18 *Fin. Sols., LLC*, No. 16-cv-01109-JST, 2019 WL 1369929, at *7-8 (N.D. Cal. Mar. 26, 2019) (awarding
19 30% of common fund in TCPA case); *In re Lidoderm Antitrust Litig.*, No. 14-md-02521-WHO, 2018
20 WL 4620695, at *1, *2 (N.D. Cal. Sept. 20, 2018) (awarding one-third of \$104.75 million settlement);
21 *In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995) (holding district court did not abuse
22 discretion in awarding one-third of \$12 million settlement).

23 Adjustments to the benchmark may be made in light of the following factors, which the Ninth
24 Circuit considered in *Vizcaino v. Microsoft Corp.*: (1) the results achieved for the class; (2) the complexity
25 of the case and the risk of and expense to counsel of litigating it; (3) the skill, experience, and
26 performance of counsel on both sides; (4) the contingent nature of the fee; and (5) fees awarded in
27 comparable cases. *Capacitors I*, 2018 WL 4790575, at *3; *see also Six (6) Mexican Workers v. Arizona Citrus*
28 *Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). Furthermore, the Ninth Circuit has held the court may

1 compare the lodestar and the percentage benchmark to determine if the requested attorneys' fees are
2 inappropriately high or low, although it is not required to do so. *Fischel v. Equitable Life Assur. Soc'y of*
3 *U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002). As discussed below, the requested fee is fair and reasonable
4 in light of the *Vizcaino* factors and a lodestar crosscheck.

5 **1. Plaintiffs' Counsel Achieved a Great Result for the Settlement Class**

6 "The touchstone for determining the reasonableness of attorneys' fees in a class action is the
7 benefit to the class." *Lowery v. Rhapsody Int'l, Inc.*, 75 F.4th 985, 988 (9th Cir. 2023). Courts have
8 consistently recognized that the result achieved is "the most critical factor" to consider in making a
9 fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479-
10 JST, 2018 WL 6619983, at *13 (N.D. Cal. Dec. 18, 2018).

11 As described above, after more than five years of litigation, Plaintiffs' Counsel negotiated a
12 Settlement that establishes a \$20,000,000 non-reversionary fund for the Settlement Class, which will
13 result in an estimated payment per claimant of \$284.67 if the claim rate is 15% and all fees, costs, and
14 service awards are approved. In similar recent TCPA actions, courts have awarded attorneys' fees of
15 more than 30% of the settlement fund. *Williams*, 2025 WL 1149710, at *2 (awarding fees of one-third
16 of \$6,500,000 TCPA settlement fund where each claimant was anticipated to receive between \$212
17 and \$350); *see also Floyd*, 2022 WL 6173122, at *1, *2 (finally approving TCPA settlement where each
18 claimant received approximately \$202.57 and awarding fees of 33.33% of \$1,600,000 settlement fund).

19 Indeed, the estimated payment of \$284.67 exceeds similar TCPA settlements approved by
20 other courts, including many in this Circuit, particularly in cases involving allegations of a realty
21 brokerage's vicarious liability for agents' calls. *See, e.g., DeShay v. Keller Williams Realty, Inc.*, No.
22 2022CA000457 (Fla. Cir. Ct. 19th Jud. Cir. Indian-River Cty. 2023) (TCPA vicarious liability case
23 against realty brokerage arising from agents' calls in which claimants received approximately \$14 each
24 from settlement); *Wright v. eXp Realty, LLC*, No. 6:18-cv-01851-PGB-EK (M.D. Fla. 2022) (TCPA
25 vicarious liability case against realty brokerage arising from agents' calls in which claimants received
26 approximately \$59 each from settlement); *Lalli v. First Team Real Est.-Orange Cnty.*, No. 8:20-cv-00027-
27 JWH-ADS, 2022 WL 8207530, at *8, *10 (C.D. Cal. Sept. 6, 2022) (finally approving settlement in
28 TCPA vicarious liability case against realty brokerage arising from agents' calls in which claimants

1 received approximately \$110 each); *Odom v. ECA Mktg., Inc.*, No. 20-cv-00851-JGB-SHK, 2021 WL
2 4803488, at *3 (C.D. Cal. May 27, 2021) (preliminarily approving TCPA settlement where each
3 claimant would receive approximately \$35); *Thomas v. Dun & Bradstreet Credibility Corp.*, No. 15-cv-
4 03194-BRO-GJS, 2017 WL 11633508, at *2, *13-14 (C.D. Cal. Mar. 22, 2017) (finally approving TCPA
5 settlement where each claimant received approximately \$100); *Manouchebri v. Styles for Less, Inc.*, No.
6 14-cv-02521-NLS, 2016 WL 3387473, at *2 (S.D. Cal. June 20, 2016) (preliminarily approving TCPA
7 settlement where class members could choose to receive \$10 cash or \$15 voucher); *Estrada v. iYogi,*
8 *Inc.*, No. 2:13-cv-01989-WBS-CKD, 2015 WL 5895942, at *7 (E.D. Cal. Oct. 6, 2015) (preliminarily
9 approving TCPA settlement where each claimant would receive \$40); *In re Cap. One Tel. Consumer Prot.*
10 *Act Litig.*, 80 F. Supp. 3d 781, 789 (N.D. Ill. 2015) (finally approving TCPA settlement where
11 defendants paid \$34.60 per claimant); *Rose v. Bank of Am. Corp.*, No. 5:11-cv-02390-EJD, 2014 WL
12 4273358, at *10 (N.D. Cal. Aug. 29, 2014) (finally approving TCPA settlement where claimants would
13 receive “an average recovery of between \$20 to \$40,” which was “in the lower range of recovery
14 achieved in other TCPA class action settlements”).

15 The monetary benefit to the Settlement Class is a commendable result.

16 2. Continued Litigation of This Complex Action Poses Substantial Risk

17 “The risk that further litigation might result in Plaintiffs not recovering at all, particularly [in]
18 a case involving complicated legal issues, is a significant factor in the award of fees.” *In re Omnivision*
19 *Techs., Inc.*, 559 F. Supp. 2d at 1046-47 (citing *Vizcaino*, 290 F.3d at 1048); *Carlin v. DairyAmerica, Inc.*,
20 380 F. Supp. 3d 998, 1020 (E.D. Cal. 2019) (“Risk is a relevant circumstance.”).

21 While Plaintiffs’ Counsel are confident in the strength of Plaintiffs’ claims, Plaintiffs would
22 face substantial risks should this action proceed in litigation. Plaintiffs’ claims could be dismissed or
23 narrowed by motions *in limine*, at trial, or on a subsequent appeal. Decl. Granade ¶ 142. The Court
24 could grant Realogy’s motion *in limine* to exclude the PhoneBurner and WAVV call logs, and it could
25 decline to admit the Mojo call logs, which at minimum would greatly increase the complexity and
26 difficulty of prevailing on a classwide basis at trial. *Id.* The jury could also decline to credit Plaintiffs’
27 evidence. *Id.* For example, if the jury does not credit Sarah Bumpus’s testimony that she told Coldwell
28 Banker agents not to call her back before she received the calls at issue, then Ms. Bumpus would not

1 be able to prevail on the NDNC Class’s claims because she would have an established business
2 relationship with Coldwell Banker. *Id.* The jury could also find for the NDNC Class but award them
3 only a de minimis amount in damages on a per violation basis, *see* 47 U.S.C. § 227(c)(5) (providing for
4 “up to \$500” per call). Decl. Granade ¶ 142. Even if Plaintiffs prevailed, they would likely face a post-
5 verdict motion to reduce the judgment amount for both the NDNC Class and Prerecorded Message
6 Class based on the Ninth Circuit’s direction in *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109 (9th Cir. 2022).
7 Decl. Granade ¶ 142. Realogy has also repeatedly requested to decertify the classes, and the Court has
8 held open the possibility that decertification could occur at or after trial. *Id.*; ECF No. 390.

9 This case also involves significant ongoing risk at trial and on appeal due to the Settlement
10 Class’s novel theory of real estate brokerage vicarious liability. Notably, at the time this case was filed,
11 no court had certified a class on a similar theory of realty brokerage vicarious liability for TCPA-
12 violative calls made by affiliated realtors or found the theory otherwise viable in any legal context.
13 Decl. Granade ¶ 143. Plaintiffs’ Counsel are at the forefront of this novel theory and are not aware of
14 a single such case being filed in any court before Plaintiffs’ Counsel began pursuing it in May 2018,
15 seven years ago. *Id.* (collecting cases). Since then, courts across the country have repeatedly disagreed
16 about the viability of Plaintiffs’ Counsel’s vicarious liability theory seeking to hold brokerages liable
17 for the acts of affiliated realtors. *Id.* (collecting cases). Indeed, courts have disagreed about the viability
18 of this theory at every stage of litigation, including at the class certification stage. *Id.* (citing cases).

19 There is significant ongoing risk involved in continuing to pursue the class’s claims through
20 trial and appeals, which, at best, would delay any benefit to the class for years. Courts recognize it may
21 be “proper to take the bird in hand instead of a prospective flock in the bush.” *Nat’l Rural Telecomm’s*
22 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004).

23 3. Both Sides Were Represented by Skilled and Experienced Counsel

24 The demonstrated skill of Plaintiffs’ Counsel and the quality of their work further support the
25 reasonableness of the requested 30% fee. A fee award in excess of 25% “is justified where class counsel
26 ‘has significant experience in the particular type of litigation at issue’” and, moreover, “is appropriate
27 where ‘[c]ounsel litigated effectively, and their experience was essential for obtaining the result.’”
28 *Marshall v. Northrop Grumman Corp.*, No. 16-cv-06794-AB-JC, 2020 WL 5668935, at *3 (C.D. Cal. Sept.

1 18, 2020); *Boyd v. Bank of Am. Corp.*, No. 13-cv-00561-DOC, 2014 WL 6473804, at *10 (C.D. Cal. Nov.
2 18, 2014) (“The skill and work of counsel merits an upward adjustment from the [25%] benchmark.”).

3 As this Court is aware, Plaintiffs’ Counsel successfully overcame several potentially dispositive
4 motions and have vigorously advocated for the Settlement Class throughout the litigation. Plaintiffs
5 and the Settlement Class benefited from the high caliber representation of Plaintiffs’ Counsel,
6 including Plaintiffs’ Counsel’s TCPA class action experience. For example, since 2008, Kaufman P.A.
7 have achieved class-wide TCPA settlements totaling more than \$100 million. Decl. Kaufman ¶ 4. The
8 attorneys of Bailey Glasser were lead trial counsel for the class in one of the few TCPA class actions
9 to go to trial, *Krakauer v. Dish Network, L.L.C.*, No. 1:14-cv-00333 (M.D.N.C.), and achieved \$61.3
10 million in damages for the class at trial. Decl. Barrett ¶ 4. As set forth in the Declaration of Sabita J.
11 Soneji, attorneys Sabita J. Soneji and Hassan A. Zavareei and their law firm Tycko & Zavareei LLP
12 have recovered hundreds of millions of dollars on behalf of consumers in class action lawsuits. Both
13 Ms. Soneji and Mr. Zavareei have litigated numerous TCPA lawsuits through class wide recovery prior
14 to this case. Mr. Zavareei has also testified before the House Judiciary Committee regarding the TCPA.
15 An accomplished trial and appellate attorney, Mr. Zavareei has been recognized as a 2021 Class Action
16 MVP by Law 360 (an award given to only five attorneys in the United States each year) and named a
17 “Titan of the Plaintiffs’ Bar” in 2022 by Law 360. Ms. Soneji’s skills have been recognized by Law.com
18 as a “500 Leading Plaintiff Consumer Lawyers” and a California Legal Awards Distinguished Leader
19 Award Winner, and by the Elite Trial Lawyers as a recipient of the 2023 Diversity Initiative Award by
20 the National Law Journal. In this case, Plaintiffs’ Counsel’s skill, experience, and perseverance have
21 brought about an outstanding result.

22 The standing of opposing counsel also merits consideration because such standing reflects the
23 challenges faced by Plaintiffs’ Counsel and the skill necessary to meet those challenges. *See, e.g., Wing*
24 *v. Asarco Inc.*, 114 F.3d 986, 989 (9th Cir. 1997) (noting the district court’s evaluation of the job done
25 by class counsel “in light of the quality of opposition counsel and [the defendant’s] record of success
26 in this type of litigation”); *Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946, at *17 (N.D.
27 Cal. Feb. 11, 2016) (“The quality of opposing counsel is also relevant to the quality and skill that class
28 counsel provided . . .”). Realogy was represented by teams of experienced attorneys from Faegre

1 Drinker Biddle & Reath LLP, K&L Gates LLP, and Gordon Rees Scully Mansukhani, LLP, all of
2 which are well-regarded law firms. These firms expended considerable effort and expense in their
3 zealous defense against Plaintiffs' claims. The favorable result obtained by Plaintiffs' Counsel against
4 these formidable firms and their well-financed clients is further evidence of Plaintiffs' Counsel's skill
5 and supports the requested fee.

6 **4. Plaintiffs' Counsel Faced the Risk of Recovering No Fees At All**

7 Plaintiffs' Counsel's fee request reflects the contingency fee nature of their representation and
8 the corresponding risk of recovering no fees. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at
9 955. "The importance of assuring adequate representation for plaintiffs who could not otherwise
10 afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-
11 fee basis a larger fee than if they were billing by the hour or on a flat fee." *In re Omnivision Techs., Inc.*,
12 559 F. Supp. 2d at 1047; *see also Morales v. Conopco, Inc.*, No. 2:13-cv-02213-WBS-EFB, 2016 WL
13 6094504, at *7 (E.D. Cal. Oct. 18, 2016) ("Since class counsel took this case on a contingency basis,
14 their risk of recovery was the same as the class members . . ."). As the Ninth Circuit has explained:

15 It is an established practice in the private legal market to reward attorneys for taking
16 the risk of non-payment by paying them a premium over their normal hourly rates for
17 winning contingency cases. Contingent fees that may far exceed the market value of
18 the services if rendered on a non-contingent basis are accepted in the legal profession
19 as a legitimate way of assuring competent representation for plaintiffs who could not
afford to pay on an hourly basis regardless whether they win or lose. . . . "[I]f this
'bonus' methodology did not exist, very few lawyers could take on the representation
of a class client given the investment of substantial time, effort, and money, especially
in light of the risks of recovering nothing."

20 *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299-300 (9th Cir. 1994) (citations
21 omitted). Indeed, attorneys undertake "immense risks" in "prosecuting complex cases in which there
22 is a great risk of no recovery." *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*,
23 No. 4:14-md-02541-CW, 2017 WL 6040065, at *7 n.42 (N.D. Cal. Dec. 6, 2017).

24 A larger award of 30% is warranted here because Plaintiffs' Counsel risked significant amounts
25 of their own funds and dedicated time and effort to litigate the case through the class certification
26 process, motions for summary judgment, *Daubert* motions, and trial preparation. *Davis*, 2023 WL
27 3063823, at *2 ("Here, a larger award of 33% is warranted because counsel risked significant amounts
28 of their own funds and dedicated time and effort to litigate through the class certification process, the

1 motion for summary judgment, expert retention, trial preparation, and the nearly \$1 million counsel
2 put at risk in advancing costs.”). Indeed, to date, Plaintiffs’ Counsel have received no compensation
3 in the Action, yet have invested 10,243.75 hours for a total lodestar of \$9,739,959.65 and incurred
4 expenses of \$898,739.46. Decl. Granade ¶ 144. Plaintiffs’ Counsel advanced costs for expert reports
5 and have shouldered expenses for experts of \$294,362.50. *Id.* & n.12. Plaintiffs’ Counsel are also
6 responsible for \$365,390 in costs of the initial class notice. *Id.* at ¶ 144. Plaintiffs’ Counsel were
7 “precluded from pursuing other potential sources of revenue due to [their] prosecution of the claims
8 in this action,” which should also be taken into account. *Birch v. Off. Depot, Inc.*, No. 06-cv-01690-
9 DMS-WMC, 2007 WL 9776717, at *2 (S.D. Cal. Sept. 28, 2007). And additional uncompensated work
10 in connection with the Settlement and claims administration will be incurred going forward. Decl.
11 Granade ¶ 149; Decl. Soneji ¶ 14. The contingent risk, substantial opportunity costs, and Plaintiffs’
12 Counsel’s significant commitment of time, money, and resources litigating this Action for more than
13 five years strongly favor a finding that the requested fee is reasonable. *See Rabin v. PricewaterhouseCoopers*
14 *LLP*, No. 16-cv-02276-JST, 2021 WL 837626, at *8 (N.D. Cal. Feb. 4, 2021) (stating that “the
15 attorney’s fee award should take into account the risk of representing Plaintiffs on a contingency basis
16 over a period of four years of litigation” and awarding fee of 35% of settlement fund).

17 **5. The Fee Request Is Consistent with Awards in Comparable Cases**

18 Here, the 30% fee request is consistent with the fees awarded in other recent TCPA
19 settlements in courts within the Ninth Circuit. *Williams*, 2025 WL 1149710, at *2 (one-third of TCPA
20 settlement fund); *Floyd*, 2022 WL 6173122, at *1, *2 (33.33% of TCPA settlement fund); *Lalli*, 2022
21 WL 8207530, at *14 (30% of TCPA settlement fund, where claimants would receive approximately
22 \$110); *Judson v. Goldco Direct, LLC*, No. 19-cv-06798-PSG-PLA, 2021 WL 8462049, at *10 (C.D. Cal.
23 June 11, 2021) (one-third of TCPA settlement fund); *Izor v. Abacus Data Sys., Inc.*, No. 19-cv-01057-
24 HSG, 2020 WL 12597674, at *10 (N.D. Cal. Dec. 21, 2020) (30% of TCPA settlement fund, “in
25 recognition of the favorable settlement, the substantial risks of litigation, and the financial burden
26 assumed”); *Cabiness*, 2019 WL 1369929, at *7-8 (30% of TCPA settlement fund, where per-class-
27 member recovery was \$33.36); *Gergetz v. Telenav, Inc.*, No. 16-cv-04261-BLF, 2018 WL 4691169, at *7
28 (N.D. Cal. Sept. 27, 2018) (30% of TCPA settlement fund, “based on the exceptional results achieved,

1 the risk of litigation, the fine quality of Class Counsel’s work, and the contingent nature of the fee”).

2 Additionally, courts adjust the benchmark upward where, as here, the settlement is a favorable
3 result for the class, and class counsel made a significant investment of time and resources, particularly
4 where the lodestar multiplier is negative. *See Schmitt v. Kaiser Found. Health Plan of Washington*, No. 2:17-
5 cv-01611-RSL, 2024 WL 1676754, at *4 (W.D. Wash. Apr. 18, 2024) (awarding one-third of settlement
6 fund); *Scott v. Blackstone Consulting, Inc.*, No. 21-cv-01470-MMA-KSC, 2024 WL 271439, at *9 (S.D.
7 Cal. Jan. 24, 2024) (awarding one-third of settlement amount where lodestar multiplier was negative);
8 *Suarez v. Bank of Am., Nat’l Ass’n*, No. 18-cv-01202-LB, 2024 WL 150721, at *3 (N.D. Cal. Jan. 11,
9 2024) (same).

10 **6. A Lodestar Crosscheck Confirms the Requested Fee’s Reasonableness**

11 “[W]hile the primary basis of the fee award remains the percentage method, the lodestar may
12 provide a useful perspective on the reasonableness of a given percentage award.” *Vizcaino*, 290 F.3d
13 at 1050. “[T]he lodestar calculation can be helpful in suggesting a higher percentage when litigation
14 has been protracted.” *Id.* Courts first calculate the lodestar by multiplying the number of hours
15 reasonably expended by a reasonable rate, and then consider adjusting the lodestar to account for
16 factors such as the quality of representation, the benefit obtained for the class, the complexity and
17 novelty of the issues, risk of nonpayment, and awards in similar cases. *Bluetooth*, 654 F.3d at 941-42.

18 In this case, the lodestar crosscheck emphasizes the reasonableness of Plaintiffs’ Counsel’s fee
19 request. Plaintiffs’ Counsel’s combined lodestar of \$9,739,959.65 reflecting 10,243.75 hours of work—
20 which, as discussed below, is based on reasonable rates and a reasonable number of hours—represents
21 a “negative” multiplier of approximately 0.62.⁵ *Smith v. Apple, Inc.*, No. 21-cv-09527-HSG, 2025 WL
22 1266927, at *8 (N.D. Cal. May 1, 2025) (negative multiplier of 0.9 supported reasonableness of fee
23 award); *Williams*, 2025 WL 1149710, at *3 (“The lodestar multiplier of 0.72x strongly supports the fee
24 award.”); *Norton v. LVNV Funding, LLC*, No. 18-cv-05051-DMR, 2021 WL 3129568, at *11 (N.D.
25 Cal. July 23, 2021) (“Given that contingency cases may warrant a positive multiplier, the negative
26 multiplier weighs in favor of reasonableness.”). Thus, the reasonableness of the fee request is even

27 _____
28 ⁵ Notably, Plaintiffs’ Counsel have excluded hours from all timekeepers who worked less than 50
hours on the case from their lodestar calculation. Decl. Granade ¶ 144 n.11.

1 further evident, as courts in this Circuit frequently award multipliers of around 4 times lodestar. *See*,
2 *e.g.*, *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 633 (N.D. Cal. 2021) (Donato, J.)
3 (awarding fee in \$650 million common fund settlement representing 4.71 multiplier); *Capacitors I*, 2018
4 WL 4790575, at *6 (“In the Ninth Circuit, a lodestar multiplier of around 4 times has frequently been
5 awarded in common fund cases such as this.”); *In re VeriFone Holdings, Inc. Secs. Litig.*, No. 07-cv-06140-
6 EMC, 2014 WL 12646027, at *2 (N.D. Cal. Feb. 18, 2014) (acknowledging that “over 80% of
7 multipliers fall between 1.0 and 4.0” and awarding fee reflecting 4.3 multiplier).

8 **a. Plaintiffs’ Counsel’s Rates Are Reasonable**

9 As attested to in Plaintiffs’ Counsel’s concurrently-filed declarations, Plaintiffs’ Counsel’s rates
10 are the prevailing rates in the appropriate legal markets, and are reasonable. Decl. Granade ¶¶ 150-53;
11 Decl. Soneji ¶ 9; Decl. Kaufman ¶ 9; Decl. Coleman ¶ 5; Decl. Barrett ¶ 7. Reese LLP, Tycko &
12 Zavareei LLP, Kaufman P.A., Coleman PLLC, and Bailey & Glasser are seeking hourly rates in line
13 with those billed by attorneys of comparable experience and skill, rates that the firms have historically
14 billed, and hourly rates approved by courts across the country.

15 Reese LLP, based in New York, has been awarded fees based on its hourly rates, which are
16 consistent with New York market rates. *See, e.g., Lipssett v. Banco Popular North America*, No. 1:22-cv-
17 03901-MMG (S.D.N.Y. Jan. 7, 2025), ECF No. 62 (order granting class counsel’s fee request in total
18 based upon 2025 calendar year hourly rate for Michael R. Reese of \$1,625 per hour); *McKinley v.*
19 *Conopco, Inc.*, Index No. 805260/2024E (Bronx County Supreme Court, Nov. 22, 2024) (order granting
20 class counsel’s fee request in total based upon 2024 calendar year hourly rate for Michael R. Reese of
21 \$1,600 per hour), *available at* <https://www.vanillaicecreamsettlement.com>; Decl. Granade ¶ 152.

22 Both Tycko & Zavareei and Bailey & Glasser are seeking hourly rates as determined by the
23 Adjusted Laffey Matrix, which is the most commonly-used fee matrix for determining fees in complex
24 cases in the D.C. Circuit and provides the standard hourly rates for attorneys practicing in Washington,
25 D.C., where Tycko & Zavareei and Bailey & Glasser are located. The rates charged by Tycko &
26 Zavareei and Bailey & Glasser have been applied in connection with the approval of their fee
27 applications in other recent matters. *See, e.g., Kumar v. Salov North America Corp.*, No. 14-cv-02411-YGR,
28 2017 WL 2902898 (N.D. Cal. July 7, 2017) (approving Tycko & Zavareei rates as “reasonable and

1 commensurate with those charged by attorneys with similar experience in the market”); *Stathakos v.*
2 *Columbia Sportswear Co.*, No. 15-cv-04543-YGR, 2018 WL 1710075, at *6 (N.D. Cal. Apr. 9, 2018);
3 *Meta v. Target Corp.*, No. 14-cv-00832 (N.D. Ohio Aug. 7, 2018), ECF No. 179; *In re Think Finance,*
4 *LLC*, No. 17-bk-33964 (Bankr. N.D. Tex.); *Brown v. Transurban USA, Inc.*, No. 1:15-cv-00494-JCC-
5 MSN, 2016 WL 6909683 (E.D. Va. Sept. 29, 2016); *Small v. BOKF, N.A.*, No. 1:13-cv-01125-REB-
6 MJW (D. Colo.). *See* Decl. Soneji ¶ 9.

7 And Kaufman P.A. and Coleman PLLC, who specialize in prosecuting TCPA class actions,
8 are seeking the same hourly rates that have been regularly approved for years by courts in other TCPA
9 cases settled by these firms across the country, including in the Ninth Circuit. *See, e.g., Izor*, 2020 WL
10 12597674, at *10; *Bulette v. Western Dental Services Inc.*, No. 3:19-cv-00612-MMC (N.D. Cal. Jul. 17,
11 2020), ECF No. 82; *Stark v. Blue Cross and Blue Shield of North Carolina, et al.*, No. 1:23-cv-22 (M.D.N.C.
12 Feb. 18, 2025), ECF No. 80; *Beiswinger v. West Shore Home LLC*, No. 3:20-cv-01286-HES-PDB (M.D.
13 Fla. May 26, 2022), ECF No. 36; *Wright, et al. v. eXp Realty, LLC*, No. 6:18-cv-01851-PGB-EJK (M.D.
14 Fla. Oct. 26, 2022), ECF No. 230; *Judson v. Goldco Direct, LLC*, No. 2:19-cv-06798-PSG-PLA (C.D.
15 Cal. Jun. 11, 2021), ECF No. 59. *See* Decl. Kaufman ¶ 9; Decl. Coleman ¶ 5.

16 This District has approved fee awards to complex class action litigation attorneys based on
17 similar rates. *See, e.g., Fleming v. Impax Lab’s Inc.*, No. 16-cv-06557-HSG, 2022 WL 2789496, at *9
18 (N.D. Cal. July 15, 2022) (approving hourly rates of \$760 to \$1,325 for partners, \$895 to \$1,150 for
19 counsel, and \$175 to \$520 for associates and finding that such “billing rates in line with prevailing
20 rates in this district for personnel of comparable experience, skill, and reputation”); *In re Volkswagen*
21 *“Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, MDL No. 2672-CRB-JSC, 2017 WL 1047834, at
22 *5 (N.D. Cal. Mar. 17, 2017) (approving billing rates ranging from \$275 to \$1600 for partners, \$150
23 to \$790 for associates, and \$80 to \$490 for paralegals). Plaintiffs’ Counsel’s hourly rates are also similar
24 to those charged by the defense bar in complex litigation. *See* National Association of Legal Fee
25 Analysis (July 23, 2018), *available at* <https://www.thenalfa.org/blog/law-s-1-000-plus-hourly-rate-club>
26 (“Kirk A. Radke [from] Kirkland & Ellis LLP in New York had an hourly fee of \$1,250 [as early as
27 2010] . . . lawyer John M. Reiss, from White & Case in New York, started billing \$1,100 an hour last
28 year [2017]”).

1 Lastly, Plaintiffs' Counsel calculated their lodestar using their firms' current hourly rates.
2 Relying on current rates is appropriate given the deferred and contingent nature of counsel's
3 compensation. *See In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1305; *see also LeBlanc-*
4 *Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (“[C]urrent rates, rather than historical rates,
5 should be applied in order to compensate for the delay in payment.” (citing *Missouri v. Jenkins*, 491 U.S.
6 274, 283-84 (1989)). Using current rates, rather than historical rates, will fairly compensate Plaintiffs'
7 Counsel for the significant risk of nonpayment taken on in connection with this matter.

8 **b. The Hours Plaintiffs' Counsel Have Expended Are Reasonable**

9 The number of hours Plaintiffs' Counsel devoted to litigating this hotly contested case is also
10 reasonable given the length of the litigation, the complexity of the case, and the amount of relief
11 recovered for the Settlement Class. As detailed in their respective firms' declarations, Plaintiffs'
12 Counsel have logged 10,243.75 hours in uncompensated time to achieve the Settlement in this case.
13 *See* Decl. Granade ¶ 144. While substantial, this time reflects the significant effort Plaintiffs' Counsel
14 put into litigating this case to the eve of trial, through multiple motions to dismiss, extensive discovery
15 including numerous non-party subpoenas, a motion for class certification and Rule 23(f) petition,
16 motions for summary judgment, *Daubert* motions, and pretrial filings. *Id.* at ¶¶ 5-141.

17 Furthermore, Plaintiffs' Counsel anticipate expending additional time and effort through final
18 approval to respond to inquiries from Settlement Class Members, respond to any potential objectors,
19 prepare final approval papers, review claims, and advocate on behalf of the Settlement Class in the
20 event a claim is wrongfully denied. Decl. Granade ¶ 149; Decl. Soneji ¶ 14. Plaintiffs' Counsel estimate
21 70 hours of work will be required to see this matter to completion, assuming no objections are filed.
22 Decl. Granade ¶ 149. These additional hours will likely increase the lodestar. Thus, by the time this
23 matter is closed, total lodestar will likely approach, and may exceed, \$10,000,000.

24 **IV. Plaintiffs' Counsel's Expenses Are Reasonable and Should Be Approved**

25 “It is appropriate to reimburse attorneys prosecuting class claims on a contingent basis for
26 ‘reasonable expenses that would typically be billed to paying clients in non-contingency matters,’ *i.e.*,
27 costs ‘incidental and necessary to the effective representation of the Class.’” *Capacitors I*, 2018 WL
28 4790575, at *6 (citing *Harris v. Marboefer*, 24 F.3d 16, 19 (9th Cir. 1994), and *In re Omnivision Techs., Inc.*,

1 559 F. Supp. 2d at 1048). Plaintiffs’ Counsel seek reimbursement of \$898,739.46 (in addition to
2 Settlement Administrative Expenses).

3 With their concurrently-filed declarations, Plaintiffs’ Counsel have provided details of their
4 expenses on this action, and the expenses sought are of a type routinely charged to hourly paying
5 clients and, therefore, properly paid out of the common fund. *Ochoa v. McDonald’s Corp.*, No. 3:14-cv-
6 02098-JD, 2016 WL 8290114, at *3 (N.D. Cal. Nov. 14, 2016) (Donato, J.) (“[E]xpenses should be
7 paid from the common fund because all class members should contribute their fair share of the costs
8 of the litigation from which they benefitted.”). A substantial part of Plaintiffs’ Counsel’s expenses are
9 expert costs, which amount to \$294,362.50. *Franco v. Ruiz Food Prods., Inc.*, No. 1:10-cv-02354-SKO,
10 2012 WL 5941801, at *22 (E.D. Cal. Nov. 27, 2012) (expert fees are among the “types of fees [that]
11 are routinely reimbursed”); Decl. Granade ¶ 144 & n.12. Another substantial part of the costs is the
12 cost of the initial class notice, which was \$365,390. Decl. Granade ¶ 144. Plaintiffs’ Counsel’s expenses
13 also include filing fees, process server fees, mediation costs, travel, lodging, meal costs, postage,
14 conference calls, legal research, court reporting, videography, DRE records research, PACER,
15 courtesy copies, and delivery fees. *See, e.g.*, Decl. Granade, Ex. 2; Decl. Soneji, Ex. 2.

16 Notably, Plaintiffs’ Counsel have reduced their cost request as follows: (a) hotel costs were
17 capped at \$350 per night; (b) meals were capped at \$40 for dinner, and \$20 for all other meals; (c) copy
18 charges were eliminated; (d) flight costs were capped at \$700. The excluded costs will be borne entirely
19 by Plaintiffs’ Counsel. Given that the expenses sought here are routinely charged to clients and
20 reasonably incurred in prosecuting and settling the Action, Plaintiffs’ Counsel respectfully request that
21 the Court award Plaintiffs’ Counsel the entirety of their \$898,739.46 expense request. *In re Google Play*
22 *Dev. Antitrust Litig.*, No. 20-cv-05792-JD, 2024 WL 150585, at *4 (N.D. Cal. Jan. 11, 2024) (Donato, J.)
23 (awarding “reasonable expenses incurred in the normal course of this litigation”).

24 **V. Plaintiffs’ Request for Service Awards Is Reasonable**

25 Service awards “are fairly typical in class action cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d
26 948, 958 (9th Cir. 2009). Such awards are “discretionary.” *Id.*; *see In re Online DVD-Rental Antitrust*
27 *Litig.*, 779 F.3d at 947-48 (approving \$5,000 service awards where litigation was “complicated” and
28 “took up quite a bit of the class representatives’ time”).

1 As evidenced in their concurrently-filed declarations, Plaintiffs performed their duties as class
2 representatives here by: (1) speaking with counsel about and assisting in drafting the allegations of the
3 first and third amended pleadings; (2) reviewing and discussing key documents throughout the
4 litigation; (3) searching for, collecting, and producing documents; (4) answering interrogatories; (5)
5 sitting for depositions; (6) preparing to testify at trial; (7) making themselves available by telephone
6 for two mediations and a settlement conference; and (8) reviewing and approving the Settlement
7 Agreement before it was executed and submitted to the Court. Decl. Bumpus ¶ 3; Decl. Peker ¶ 3;
8 Decl. Rowan ¶ 3.

9 Plaintiffs' Counsel seek a \$5,000 Service Award for each class representative, Sarah Bumpus,
10 Micheline Peker, and Cheryl Rowan, in recognition of their contributions on behalf of the Settlement
11 Class. Plaintiffs' Counsel believe Service Awards of this amount are fully supported by Plaintiffs'
12 efforts. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015) (collecting cases and
13 stating that “[i]n this district, a \$5,000 payment is presumptively reasonable”); *see also Todd v. STAAR*
14 *Surgical Co.*, No. 14-cv-05263-MWF-GJS, 2017 WL 4877417, at *6 (C.D. Cal. Oct. 24, 2017) (collecting
15 “numerous cases in which service awards of \$10,000 or more” were held reasonable). Furthermore,
16 the Service Awards constitute only a tiny percentage of the Total Settlement Amount (0.075 %). *In re*
17 *Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d at 633 (awarding \$5,000 to each of three plaintiffs
18 where the “payments would be a miniscule proportion of the settlement amount”). Finally, the
19 requested Service Awards align with amounts approved for other class representatives in TCPA cases
20 in the Ninth Circuit. *See, e.g., Cabiness*, 2019 WL 1369929, at *8 (\$5,000); *Gergetz*, 2018 WL 4691169, at
21 *7 (\$5,000); *Ikuseghan v. Multicare Health Sys.*, No. 14-cv-05539-BHS, 2016 WL 4363198, at *3 (W.D.
22 Wash. Aug. 16, 2016) (\$15,000); *Vandervort v. Balboa Cap. Corp.*, 8 F. Supp. 3d 1200, 1208 (C.D. Cal.
23 2014) (“a combined \$10,000” for two plaintiffs).

24 **VI. Conclusion**

25 For all the foregoing reasons, Plaintiffs and Plaintiffs' Counsel respectfully request that the
26 Court approve attorneys' fees of \$6,000,000, expenses of \$898,739.46 (in addition to Settlement
27 Administrative Expenses), and Service Awards of \$5,000 for each of the class representatives, Sarah
28 Bumpus, Micheline Peker, and Cheryl Rowan.

1 Date: May 2, 2025

REESE LLP

2 By: /s/ George V. Granade
3 George V. Granade (State Bar No. 316050)
4 *ggranade@reesellp.com*
5 8484 Wilshire Boulevard, Suite 515
6 Los Angeles, California 90211
7 Telephone: (310) 393-0070

REESE LLP

6 Michael R. Reese (State Bar No. 206773)
7 *mreese@reesellp.com*
8 100 West 93rd Street, 16th Floor
9 New York, New York 10025
10 Telephone: (212) 643-0500

TYCKO & ZAVAREEI LLP

9 Sabita J. Soneji (State Bar No. 224262)
10 *ssoneji@tzlegal.com*
11 1970 Broadway, Suite 1070
12 Oakland, California 94612
13 Telephone: (510) 254-6808

TYCKO & ZAVAREEI LLP

13 Hassan A. Zavareei (State Bar No. 181547)
14 *hzavareei@tzlegal.com*
15 Gemma Seidita (State Bar No. 322201)
16 *gseidita@tzlegal.com*
17 2000 Pennsylvania Avenue, NW, Suite 1010
18 Washington, District of Columbia 20036
19 Telephone: (202) 973-0900

BAILEY & GLASSER LLP

17 Brian A. Glasser (*pro hac vice*)
18 *bglasser@baileyglasser.com*
19 John W. Barrett (*pro hac vice*)
20 *jbarrett@baileyglasser.com*
21 209 Capitol Street
22 Charleston, West Virginia 25301
23 Telephone: (304) 345-6555

KAUFMAN P.A.

22 Rachel E. Kaufman (State Bar No. 259353)
23 *rachel@kaufmanpa.com*
24 Avi Kaufman (*pro hac vice*)
25 *avi@kaufmanpa.com*
26 237 South Dixie Highway, Floor 4
27 Coral Gables, Florida 33133
28 Telephone: (305) 469-5881

LAW OFFICES OF STEFAN COLEMAN

26 Stefan Coleman (*pro hac vice*)
27 *lan@stefancoleman.com*
28 66 West Flagler Street, Unit 900
Miami, Florida 33130

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Telephone: (877) 333-9427

*Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,
and Cheryl Rowan and the Classes*

1 George V. Granade (State Bar No. 316050)
ggranade@reesellp.com

2 **REESE LLP**
8484 Wilshire Boulevard, Suite 515
3 Los Angeles, California 90211
Telephone: (310) 393-0070

4 Michael R. Reese (State Bar No. 206773)
mreese@reesellp.com

5 **REESE LLP**
6 100 West 93rd Street, 16th Floor
New York, New York 10025
7 Telephone: (212) 643-0500

8 Sabita J. Soneji (State Bar No. 224262)
ssoneji@tzlegal.com

9 **TYCKO & ZAVAREEI LLP**
1970 Broadway, Suite 1070
10 Oakland, California 94612
Telephone: (510) 254-6808

11 Hassan A. Zavareei (State Bar No. 181547)
hzavareei@tzlegal.com

12 Gemma Seidita (State Bar No. 322201)
gseidita@tzlegal.com

13 **TYCKO & ZAVAREEI LLP**
14 2000 Pennsylvania Avenue, NW, Suite 1010
Washington, District of Columbia 20036
15 Telephone: (202) 973-0900

16 *Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,*
and Cheryl Rowan and the Classes

Brian A. Glasser (*pro hac vice*)
bglasser@baileyglasser.com

John W. Barrett (*pro hac vice*)
jbarrett@baileyglasser.com

BAILEY & GLASSER LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555

Rachel E. Kaufman (State Bar No. 259353)
rachel@kaufmanpa.com

Avi Kaufman (*pro hac vice*)
avi@kaufmanpa.com

KAUFMAN P.A.
237 South Dixie Highway, Floor 4
Coral Gables, Florida 33133
Telephone: (305) 469-5881

Stefan Coleman (*pro hac vice*)
lan@stefancoleman.com

LAW OFFICES OF STEFAN COLEMAN
66 West Flagler Street, Unit 900
Miami, Florida 33130
Telephone: (877) 333-9427

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

21 SARAH BUMPUS, MICHELINE PEKER,
22 *and* CHERYL ROWAN, *individually, and on*
behalf of a class of similarly situated persons,

23 Plaintiffs,

24 v.

25 REALOGY HOLDINGS CORP.;
26 REALOGY INTERMEDIATE HOLDINGS
27 LLC; REALOGY GROUP LLC; REALOGY
SERVICES GROUP LLC; *and* REALOGY
BROKERAGE GROUP LLC (f/k/a NRT
LLC),

28 Defendants.

Case No. 3:19-cv-03309-JD

**DECLARATION OF GEORGE V.
GRANADE IN SUPPORT OF
PLAINTIFFS' MOTION FOR AWARD
OF ATTORNEYS' FEES AND COSTS
AND SERVICE AWARDS**

Date: August 28, 2025
Time: 10:00 a.m.
Place: Courtroom 11, 19th Floor
Judge: Honorable James Donato

1 Pursuant to 28 U.S.C. § 1746, I, George V. Granade, declare as follows:

2 1. I am a partner at the law firm of Reese LLP, which is co-counsel for Plaintiffs Sarah
3 Bumpus, Micheline Peker, and Cheryl Rowan and the Classes in the above-captioned action against
4 Anywhere.¹

5 2. I am a member in good standing of the bars of the States of California, New York,
6 and Georgia, as well as the bars of the United States Courts of Appeals for the Ninth Circuit and the
7 Second Circuit and the United States District Courts for the Northern District of California, Southern
8 District of California, Central District of California, Eastern District of California, Northern District
9 of New York, Southern District of New York, Western District of New York, Eastern District of
10 New York, Northern District of Illinois, Southern District of Illinois, Northern District of Georgia,
11 Middle District of Georgia, and District of New Mexico.

12 3. I respectfully submit this declaration in support of Plaintiffs’ Motion for Award of
13 Attorneys’ Fees and Costs and Service Awards, filed concurrently herewith.

14 4. The facts set forth in this declaration are based on personal knowledge and on
15 information I obtained from my co-counsel and the Settlement Administrator in this action, and I
16 could competently testify to them if called upon to do so.

17 **I. Overview of the History of the Litigation**

18 **A. Pre-Filing Investigation and *Chinitz v. NRT West, Inc.***²

19 5. The entirety of this litigation consists of two separate, but related actions. Before filing
20 the original complaint in the first case, Reese LLP and Tycko & Zavareei LLP investigated the
21 potential claims against Coldwell Banker on behalf of their client Ronald Chinitz.³ Those firms—
22 which are now among the firms appointed as Class Counsel in this matter—gathered information
23 about Coldwell Banker’s unlawful calling practices. Counsel expended significant resources

24 _____
25 ¹ Unless otherwise indicated, capitalized terms are defined in the Settlement Agreement, filed as
26 Exhibit 1 to the Declaration of George V. Granade in Support of Plaintiffs’ Motion for Preliminary
27 Approval of Class Action Settlement and for Certification of Settlement Classes, ECF No. 395-2.

28 ² The ECF system refers to this action as *Chinitz v. Coldwell Banker Residential Brokerage Company*. Because
Coldwell Banker Residential Brokerage Company is a “doing business as” name for NRT West, Inc.,
Plaintiffs refer to the case here as *Chinitz v. NRT West, Inc.*

³ Plaintiffs did not initially know the correct defendant to sue on account of calls from “Coldwell
Banker” agents. *See* Third Am. Compl. ¶¶ 105-23, ECF No. 118; *see also id.* at ¶¶ 48-51, 55, 64.

1 researching and developing the legal claims at issue.

2 6. To challenge Coldwell Banker’s practice of making unwanted telemarketing calls to his
3 telephone lines, on October 4, 2018, counsel for Ronald Chinitz filed a class action lawsuit alleging
4 Coldwell Banker Real Estate, LLC, and Coldwell Banker Residential Brokerage Company violated the
5 TCPA and its implementing regulations, 47 C.F.R. § 64.1200, as well as California’s Unfair
6 Competition Law, CAL. BUS. & PROF. CODE § 17200 *et seq.* (“UCL”). Complaint, *Chinitz v. NRT West,*
7 *Inc.*, No. 5:18-cv-06100-NC (N.D. Cal. Oct. 4, 2018), ECF No. 1. Mr. Chinitz alleged he received:
8 unwanted telephone solicitations from Coldwell Banker agents to residential telephone lines he had
9 previously registered on the National Do Not Call Registry (“NDNCR” or “NDNC”); repeated
10 unwanted telemarketing calls on his residential telephone lines after he had asked Coldwell Banker
11 and/or its agents not to call him back; and unwanted telemarketing calls from Coldwell Banker to his
12 residential telephone lines that used a prerecorded voice to deliver a message. *See, e.g., id.* at ¶¶ 12-22.
13 The case was assigned to Honorable Magistrate Judge Nathanael M. Cousins, and all parties
14 subsequently consented to magistrate judge jurisdiction.

15 7. After discussion between Mr. Chinitz’s counsel and Coldwell Banker’s counsel
16 regarding the appropriate company to sue concerning the conduct at issue, Mr. Chinitz filed an
17 amended complaint against NRT West, Inc. (doing business as Coldwell Banker Residential Brokerage
18 Company), on December 14, 2018, pursuant to Federal Rule of Civil Procedure 15(a)(2), dropping
19 Coldwell Banker Real Estate, LLC, as a defendant. First Amended Class Action Complaint, *Chinitz v.*
20 *NRT West, Inc.*, No. 5:18-cv-06100-NC (N.D. Cal. Dec. 14, 2018), ECF No. 16.

21 8. NRT West, Inc., moved to dismiss Mr. Chinitz’s First Amended Class Action
22 Complaint on January 9, 2019, on the grounds that Mr. Chinitz had failed to state a claim for violation
23 of 47 U.S.C. § 227(b)(1)(B) and lacked standing to assert a UCL claim. Defendant NRT West, Inc.’s
24 Notice of Motion and Motion to Dismiss First Amended Class Action Complaint of Plaintiff Ronald
25 Chinitz, *Chinitz v. NRT West, Inc.*, No. 5:18-cv-06100-NC (N.D. Cal. Jan. 9, 2019), ECF No. 26. The
26 parties fully briefed the motion by January 30, 2019.

27 9. After oral argument on February 13, 2019, Magistrate Judge Cousins granted the
28 motion in part and denied it in part on February 20, 2019, dismissing Mr. Chinitz’s UCL claim with

1 prejudice but otherwise denying the motion. Order Granting in Part and Denying in Part Motion to
2 Dismiss, *Chinitz v. NRT West, Inc.*, No. 5:18-cv-06100-NC (N.D. Cal. Feb. 20, 2019), ECF No. 42.

3 10. NRT West, Inc., answered on March 5, 2019, Defendant NRT West, Inc.'s Answer to
4 First Amended Class Action Complaint of Plaintiff Ronald Chinitz, *Chinitz v. NRT West, Inc.*, No.
5 5:18-cv-06100-NC (N.D. Cal. Mar. 5, 2019), ECF No. 43, and the case proceeded to discovery.

6 11. Mr. Chinitz served two sets of interrogatories and three sets of requests for production
7 of documents on NRT West, Inc., and in response NRT West, Inc., produced 4,542 Bates stamped
8 pages of documents/files. NRT West, Inc., served one set of interrogatories and two sets of requests
9 for production of documents on Mr. Chinitz, and in response Mr. Chinitz produced 274 Bates
10 stamped pages of documents/files.

11 12. Mr. Chinitz's counsel also took four depositions, including the deposition of NRT
12 West, Inc., Regional Vice President Nancy Robinson on May 22, 2019; the Rule 30(b)(6) deposition
13 of NRT West, Inc., on June 4, 2019; the deposition of former Coldwell Banker agent Mattias
14 Christensen⁴ on June 5, 2019; and the deposition of former Coldwell Banker agent John Carman on
15 September 25, 2019. NRT West, Inc., deposed Mr. Chinitz on July 11, 2019.

16 13. During his deposition on June 5, 2019, Mr. Christensen testified that using the tools
17 and services of companies such as Mojo Dialing Solutions, LLC ("Mojo"), to find and call potential
18 clients was a "very common" practice in the real estate industry. According to Mr. Christensen, these
19 tools included lists of telephone numbers of prospective home buyers and sellers. Mr. Chinitz
20 therefore served a subpoena on Mojo on July 17, 2019, seeking, among other things, records of
21 telephone numbers that Mojo had provided to Coldwell Banker agents for potential leads. Mr.
22 Chinitz's counsel met and conferred with Mojo's counsel between July 17, 2019, and August 9, 2019,
23 and learned that Mojo provides Coldwell Banker agents not only with telephone numbers for potential

24 _____
25 ⁴The calls to Mr. Chinitz at issue included calls made by or on behalf of Mr. Christensen. On March
26 27, 2019, Mr. Chinitz filed a motion to serve a subpoena on Mr. Christensen by means other than
27 personal service due to difficulties with serving him personally, which NRT West, Inc., opposed.
28 Plaintiff's Notice of Motion and Motion for Leave to Serve Subpoena by Alternate Means, *Chinitz v.*
NRT West, Inc., No. 5:18-cv-06100-NC (N.D. Cal. Mar. 27, 2019), ECF No. 44. After oral argument
on April 3, 2019, Magistrate Judge Cousins ultimately granted the motion on April 11, 2019. Order
Granting Motion to Serve Third-Party Subpoena by Alternate Means, *Chinitz v. NRT West, Inc.*, No.
5:18-cv-06100-NC (N.D. Cal. Apr. 11, 2019), ECF No. 53.

1 leads but also with a dialer service allowing agents to dial the leads and place calls. Mojo further
2 admitted on August 8, 2019, in amended objections to the subpoena that it possessed “documents
3 concerning many persons who are, were or appear to be or to have been real estate agents for Coldwell
4 Banker.” After further meeting and conferring, counsel for Mr. Chinitz and Mojo reached an impasse
5 regarding Mojo’s response to the subpoena, and Mr. Chinitz’s counsel filed a motion to compel
6 compliance with the subpoena in the United States District Court for the District of Puerto Rico on
7 September 25, 2019. Plaintiff’s Motion to Compel Compliance with Plaintiff’s Subpoena to Non-Party
8 Mojo Dialing Solutions, LLC, *Chinitz v. NRT West, Inc.*, No. 3:19-cv-01922 (D.P.R. Sept. 25, 2019),
9 ECF No. 1.

10 14. On August 5, 2019, Mr. Chinitz and NRT West, Inc., filed a joint discovery letter brief
11 in which Mr. Chinitz sought to compel the deposition of NRT West, Inc., President Mike James,
12 which NRT West, Inc., opposed on the ground that Mr. Chinitz had not met the standard for allowing
13 an apex deposition. Letter re: Discovery Dispute, *Chinitz v. NRT West, Inc.*, No. 5:18-cv-06100-NC
14 (N.D. Cal. Aug. 5, 2019), ECF No. 62. Magistrate Judge Cousins denied the request on the same day.
15 Order, *Chinitz v. NRT West, Inc.*, No. 5:18-cv-06100-NC (N.D. Cal. Aug. 5, 2019), ECF No. 63.

16 15. On August 6, 2019, counsel for Mr. Chinitz and NRT West, Inc., filed a joint discovery
17 letter brief in which Mr. Chinitz sought to compel a response to a request for production seeking all
18 agreements between NRT West, Inc., or its agents and call centers or calling services, which NRT
19 West, Inc., opposed on the ground that Mr. Chinitz’s request was a “fishing expedition.” Letter re:
20 Discovery Dispute, *Chinitz v. NRT West, Inc.*, No. 5:18-cv-06100-NC (N.D. Cal. Aug. 6, 2019), ECF
21 No. 64. After holding a hearing on August 14, 2019, and receiving additional briefing from the parties,
22 Magistrate Judge Cousins granted Mr. Chinitz’s motion in part on August 30, 2019, requiring NRT
23 West, Inc., to produce responsive agreements within its possession or custody but declining to require
24 it to produce responsive agreements that were only within the possession of its real estate agents.
25 Order Granting in Part Plaintiff’s Motion to Compel, *Chinitz v. NRT West, Inc.*, No. 5:18-cv-06100-
26 NC (N.D. Cal. Aug. 30, 2019), ECF No. 78.

27 16. Meanwhile, Mr. Chinitz moved for class certification on June 14, 2019, seeking to
28 certify a nationwide NDNCR class, a nationwide internal do-not-call class, and a nationwide

1 prerecorded message class. Plaintiff Ronald Chinitz’s Notice of Motion and Motion for Class
2 Certification, *Chinitz v. NRT West, Inc.*, No. 5:18-cv-06100-NC (N.D. Cal. June 14, 2019), ECF No.
3 60. The parties fully briefed the motion by August 9, 2019.

4 17. After oral argument on August 14, 2019, Magistrate Judge Cousins denied the motion
5 for class certification on August 30, 2019, for failure to establish numerosity with respect to the
6 proposed internal do-not-call and prerecord classes and failure to establish commonality with respect
7 to all three classes. Order Denying Plaintiff’s Motion for Class Certification, *Chinitz v. NRT West, Inc.*,
8 No. 5:18-cv-06100-NC (N.D. Cal. Aug. 30, 2019), ECF No. 76. With respect to numerosity, the court
9 reasoned that Mr. Chinitz had relied solely on the expert report of Anya Verkhovskaya, but Ms.
10 Verkhovskaya had merely described her intended methodology and had not provided any opinion
11 regarding the numbers of individuals that may be part of the internal do-not-call and prerecorded
12 message classes, which was insufficient to meet Mr. Chinitz’s burden. *Id.* at 5. By contrast, Ms.
13 Verkhovskaya had found that 49 phone numbers fit the NDNCR class definition, which was sufficient
14 to satisfy numerosity. *Id.* at 5-6. With respect to commonality, the court held that while Mr. Chinitz
15 had “identified common questions,” he had not “shown by a preponderance of evidence that common
16 answers exist to those questions.” *Id.* at 9. The court held that while Mr. Chinitz had “provided some
17 evidence to establish the existence of common questions,” that evidence was “currently too limited,”
18 because, for example, Mr. Chinitz had submitted evidence of calls by Mr. Christensen but had not
19 provided “evidence of a broader practice” by NRT West, Inc.’s associates. *Id.*

20 18. After reviewing Magistrate Judge Cousins’ order, counsel for Mr. Chinitz believed they
21 could obtain the additional evidence needed to support class certification, based in part on their
22 conversations with counsel for Mojo. On October 4, 2019, Mr. Chinitz filed a motion for extension
23 of the fact discovery deadline and for leave to file a narrowed class certification motion, based in part
24 on his outstanding motion to compel compliance with his subpoena to Mojo. Plaintiff Ronald
25 Chinitz’s Motion to Extend Fact Discovery Deadline Pursuant to Civil Local Rule 16-2(d) and for
26 Leave to File Narrowed Class Certification Motion, *Chinitz v. NRT West, Inc.*, No. 5:18-cv-06100-NC
27 (N.D. Cal. Oct. 4, 2019), ECF No. 84. NRT West, Inc., opposed the motion on October 11, 2019,
28 and Magistrate Judge Cousins denied it on October 14, 2019. Order, *Chinitz v. NRT West, Inc.*, No.

1 5:18-cv-06100-NC (N.D. Cal. Oct. 14, 2019), ECF No. 86.

2 **B. Filing of *Chinitz v. NRT LLC* and Dismissal of *Chinitz v. NRT West, Inc.***

3 19. Through the depositions Mr. Chinitz’s counsel took in *Chinitz v. NRT West, Inc.*, they
4 learned that NRT West, Inc., was a regional entity in northern California and that the nationwide entity
5 responsible for “Coldwell Banker,” including Coldwell Banker’s nationwide policies regarding
6 marketing using the telephone, was NRT LLC.

7 20. In order to sue a nationwide entity as he had originally intended, Mr. Chinitz filed the
8 Action before this Court on June 11, 2019, against NRT LLC. Compl., ECF No. 1.

9 21. After being initially assigned to the Honorable Magistrate Judge Virginia K. DeMarchi,
10 ECF No. 2, and then to the Honorable Saundra Brown Armstrong, Order Reassigning Case, ECF
11 No. 7, who recused herself, Order of Recusal, ECF No. 8, the Action was assigned to the Honorable
12 James Donato on June 21, 2019, Order Reassigning Case, ECF No. 9.

13 22. The Court set the initial case management conference for September 12, 2019, ECF
14 No. 10, and, at the request of Mr. Chinitz’s counsel, continued it to October 24, 2019, ECF No. 15.
15 During the conference, the Court asked why the Action was not proceeding before Magistrate Judge
16 Cousins, and Plaintiffs’ Counsel stated that Mr. Chinitz had erroneously believed based on discussion
17 with defense counsel that NRT West, Inc., was a nationwide entity, but that during a deposition, Mr.
18 Chinitz learned that the correct nationwide policy-setting entity was NRT LLC. Plaintiffs’ Counsel
19 further explained that defense counsel had refused to stipulate to amend the complaint in *Chinitz v.*
20 *NRT West, Inc.* to add or substitute in NRT LLC, and that Mr. Chinitz intended to add new putative
21 class representatives to the NRT LLC Action. The Parties and the Court discussed the possibility of
22 Mr. Chinitz and NRT West, Inc., filing a stipulation dismissing *NRT West, Inc.* with prejudice, leaving
23 the Action as the single case remaining to be pursued on a nationwide basis, with new putative class
24 representatives to be added to the pleading.

25 23. Mr. Chinitz and NRT West, Inc., filed a stipulation of dismissal with prejudice of *NRT*
26 *West, Inc.*, on October 28, 2019. Stipulation of Dismissal With Prejudice, *Chinitz v. NRT West, Inc.*, No.
27 5:18-cv-06100-NC (N.D. Cal. Oct. 28, 2019), ECF No. 87.

28

1 Corp., Realogy Intermediate Holdings LLC, Realogy Group LLC, Realogy Services Group LLC,
2 Realogy Brokerage Group LLC (“RBG”) (formerly known as NRT LLC),⁵ and Mojo. ECF No. 55.

3 31. RBG moved to dismiss on April 27, 2020, arguing Mr. Chinitz’s claims were barred by
4 the doctrine of claim preclusion; the SAC did not sufficiently allege RBG made any call to the plaintiffs
5 or could be held liable for any calls they received; and the SAC failed to give RBG proper notice under
6 Rule 8 because it improperly lumped RBG together with all of its alleged subsidiaries and parents.
7 ECF Nos. 60-61. Mojo also moved to dismiss on the same day. ECF No. 59. The parties fully briefed
8 the motions by May 18, 2020.⁶

9 32. On June 15, 2020, Realogy Holdings Corp., Realogy Intermediate Holdings LLC,
10 Realogy Group LLC, and Realogy Services Group LLC moved to dismiss on the grounds that Mr.
11 Chinitz’s claims were barred by the doctrine of claim preclusion; the SAC failed to state facts sufficient
12 to constitute a claim against the filing defendants; the SAC failed to give the filing defendants sufficient
13 notice of the claims under Rule 8; and Mr. Chinitz did not have standing to allege a UCL claim. ECF
14 No. 71.

15 33. The Court held a hearing on the motions on June 25, 2020, ECF No. 75, during which
16 the Court, among other things, ordered the Realogy defendants to refile a single motion to dismiss
17 within one week, to which the plaintiffs were to respond two weeks later. The Court also stated that
18 discovery should proceed and asked for a proposed stipulation with a case schedule.

19 34. Alain Michael filed a notice of voluntary dismissal of all of his claims without prejudice
20 on June 29, 2020. ECF No. 76.

21 35. On July 2, 2020, Realogy filed a consolidated motion to dismiss. ECF No. 77. The
22 opposition and reply were filed by July 15, 2020. ECF Nos. 79-80.

23 36. On January 19, 2021, the Court entered an Order denying Realogy’s motion to dismiss
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25 ⁵ Collectively, Realogy Holdings Corp., Realogy Intermediate Holdings LLC, Realogy Group LLC,
26 Realogy Services Group LLC, and RBG are “Realogy” or the “Realogy defendants.” Plaintiffs
determined the identities of the Realogy defendants from the certification of interested entities that
NRT LLC filed on March 30, 2020, ECF No. 52.

27 ⁶ Mojo also filed a notice of its claim that 47 U.S.C. § 227(b)(1)(B)’s government-debt exception
28 violates the First Amendment on April 28, 2020, ECF No. 63, to which the United States of America
responded on June 12, 2020, ECF No. 70. Mojo later withdrew its constitutional challenge on July 28,
2020. ECF No. 84.

1 in full. ECF No. 111.

2 **E. Third Amended Class Action Complaint, Motion to Dismiss by Mojo, Answer**
3 **by the Realogy Defendants, and Answer by Mojo**

4 37. On February 8, 2021, the Court entered an Amended Scheduling Order that, among
5 other things, set February 12, 2021, as the deadline to add parties or amend pleadings. ECF No. 117.

6 38. On February 12, 2021, Mr. Chinitz and Ms. Bumpus, along with new plaintiffs and
7 putative class representatives David Gritz, Micheline Peker, Nathan Rowan, Cheryl Rowan, Daniel
8 Caruso, and Paramjit Lalli, filed a Third Amended Class Action Complaint (“TAC”) against the
9 Realogy defendants and Mojo. ECF No. 118. Ms. Rodriguez was not included in the TAC. *Id.*

10 39. The Realogy defendants answered the TAC on February 26, 2021. ECF No. 121.

11 40. On the same day, Mojo moved to dismiss the TAC. ECF No. 120. The parties fully
12 briefed the motion by April 1, 2021. ECF Nos. 132-33.

13 41. On April 5, 2021, Nathan Rowan, Paramjit Lalli, and Daniel Caruso stipulated with
14 the Realogy defendants and Mojo to dismissal of their claims without prejudice. ECF No. 136.

15 42. On April 6, 2021, Mr. Chinitz stipulated with the Realogy defendants to dismissal with
16 prejudice of all of his remaining claims in the Action. ECF No. 137.

17 43. The Court entered an Order denying Mojo’s motion to dismiss the TAC on April 21,
18 2021. ECF No. 141.

19 44. Mojo answered the TAC on May 5, 2021. ECF No. 147.

20 **F. Discovery in the Action**

21 45. Plaintiffs served the following discovery requests on the Realogy defendants and Mojo:

- 22 • interrogatories as follows: Realogy Holdings Corp. (one set), Realogy Intermediate Holdings LLC (one set), Realogy Group LLC (one set), Realogy Services Group LLC (one set), RBG (two sets), and Mojo (one set);
- 23 • requests for production of documents as follows: Realogy Holdings Corp. (two sets), Realogy Intermediate Holdings LLC (two sets), Realogy Group LLC (two sets), Realogy Services Group LLC (three sets), RBG (three sets), and Mojo (two sets); and
- 24 • requests for admission as follows: Realogy Holdings Corp. (two sets), Realogy Intermediate Holdings LLC (two sets), Realogy Group LLC (two sets), Realogy Services Group LLC (two sets), and RBG (two sets).

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27 46. In response to Plaintiffs’ requests for production of documents, the Realogy
28 defendants and Mojo produced the following:

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- Realogy: 64,092 Bates stamped pages of documents/files; and
- Mojo: 24,008 Bates stamped pages of documents/files.

47. The Realogy defendants served the following discovery requests on Plaintiffs:

- interrogatories as follows: Sarah Bumpus (two sets), Daniel Caruso (two sets), Cheryl Rowan (two sets), Ronald Chinitz (two sets), David Gritz (two sets), Paramjit Lalli (two sets), Nathan Rowan (two sets), Micheline Peker (two sets), and Rosemary Rodriguez (one set).
- requests for production of documents as follows: Sarah Bumpus (two sets), Daniel Caruso (two sets), Cheryl Rowan (two sets), Ronald Chinitz (two sets), David Gritz (two sets), Paramjit Lalli (two sets), Nathan Rowan (two sets), Micheline Peker (two sets), and Rosemary Rodriguez (one set).

48. Mojo served the following discovery requests on Plaintiffs:

- interrogatories as follows: Sarah Bumpus (one set), Ronald Chinitz (one set), David Gritz (one set), Paramjit Lalli (one set), Micheline Peker (one set), and Rosemary Rodriguez (one set).
- requests for production of documents as follows: Sarah Bumpus (one set), Ronald Chinitz (one set), David Gritz (one set), Paramjit Lalli (one set), Micheline Peker (one set), and Rosemary Rodriguez (one set).

49. In response to the Realogy defendants' and Mojo's requests for production of documents, Plaintiffs produced the following:

- Sarah Bumpus: 2,064 Bates stamped pages of documents/files;
- Cheryl Rowan: 17 Bates stamped pages of documents/files;
- Ronald Chinitz: 718 Bates stamped pages of documents/files;
- David Gritz: 105 Bates stamped pages of documents/files;
- Micheline Peker: 12 Bates stamped pages of documents/files; and
- Rosemary Rodriguez: 8 Bates stamped pages of documents/files.

50. Plaintiffs took the following nine fact and expert depositions:

- Rule 30(b)(6) deposition of Mojo (by Davis Mangold) on March 17, 2021;
- Cathleen Ann Livingstone, Senior Education Manager, Learning and Development, at RBG, on April 6, 2021;
- Rule 30(b)(6) deposition of RBG (by Lynn Murtagh regarding, generally speaking, RBG's policies) on April 12, 2021;
- David Metten, Senior Education Manager for the Western Region at Coldwell Banker Realty, on April 15, 2021;
- Chuck Cusson, Director, National Performance Coaching, at RBG, on April 19, 2021;
- David England, Vice President of Mojo Selling Solutions (a company closely related to Mojo), on April 23, 2021;
- Rule 30(b)(6) deposition of RBG (by Wendy Crane regarding, generally speaking, RBG's marketing and agent education efforts) on June 10, 2021;
- Mojo's expert Jan Kostyun on July 12, 2021; and
- Realogy's expert Margaret Daly on July 16, 2021.

51. Realogy and Mojo took the following fact and expert depositions:

- Plaintiff Micheline Peker on April 13, 2021;

- 1 • Plaintiff Cheryl Rowan on April 27, 2021;
- 2 • Plaintiff Sarah Bumpus on April 29, 2021;
- 3 • Plaintiff David Gritz on April 30, 2021;
- 4 • Plaintiffs’ expert Randall A. Snyder on July 13, 2021; and
- 5 • Plaintiffs’ expert Anya Verkhovskaya on July 15, 2021.

6 52. On or about June 25, 2020, Plaintiffs served document subpoenas on the following 17
 7 companies that provide lists of telephone numbers to be called and/or that provide dialers that may
 8 be used to easily make numerous telephone calls, seeking documents related to use by Coldwell Banker
 9 agents of the companies’ lead lists and/or dialers:

- 10 • Arch Telecom, Inc. (also known as ArchAgent);
- 11 • RedX LLC;
- 12 • Kai Data LLC (also known as Vulcan7);
- 13 • Symphony Source LLC (also known as Espresso Agent);
- 14 • SalesDialers LLC (also known as ProspectBoss);
- 15 • Landvoice Data, LLC;
- 16 • Cole Information Services, Inc. (also known as Cole Realty);
- 17 • Benutech, Inc. (also known as Rebogateway);
- 18 • Remine Inc.;
- 19 • FSBO Hotsheet, LLC;
- 20 • PhoneBurner, Inc.;
- 21 • MobileSphere LLC (also known as Slybroadcast);
- 22 • Speed to Contact LLC (also known as Ricochet 360);
- 23 • Five9, Inc.;
- 24 • Kixie Online, Inc.;
- 25 • AUM LLC (also known as LeadsRain); and
- 26 • Cowboy Concepts LLC (also known as Drop Cowboy).

27 Counsel for Plaintiffs subsequently connected and negotiated with almost all⁷ of these entities either
 28 through counsel for the company or directly with a representative of the company itself (when the
 company did not retain counsel).

53. The responses Plaintiffs received to the subpoenas included but were not limited to
 the following:

- **SalesDialers LLC:** The company determined there were 13 Coldwell Banker agent accounts in its records. These accounts, however, were in archives that were no longer accessible and from which data could not be extracted.
- **Landvoice Data, LLC:** On June 16, 2021, Bert Compton, Chief Executive Officer of Landvoice Data, LLC (“Landvoice”), produced a sworn declaration that, among other things, described the company’s lead generation services and stated that the company had located “approximately 746” of its clients after searching its records for various email domain names associated with Coldwell Banker. Mr. Compton produced an exhibit identifying the names of these 746

⁷ According to Plaintiffs’ process server, Benutech, Inc., and Speed to Contact LLC were served with Plaintiffs’ subpoenas. However, neither company ever responded. Plaintiffs’ counsel decided not to pursue these subpoenas.

1 clients, as well as an exhibit identifying which Landvoice lead generation products
 2 each of the clients purchased and the durations of their subscriptions. Mr.
 3 Compton also stated that “during certain time periods, Landvoice directly
 4 integrated with Mojo and fed data directly to the Mojo dialer to be called” and that
 5 “Landvoice’s practice was to include in that data information enabling the caller
 6 to determine what numbers were on the Do Not Call registry.”

- 7 • **Cole Information Services, Inc. (Cole Realty):** The company produced an
 8 Excel sheet with 777 rows of information showing the account ID number,
 9 username, accountholder first and last name, account expiration date, and
 10 accountholder email address for Cole Realty accounts associated with email
 11 addresses that had domains associated with Coldwell Banker.
- 12 • **Remine Inc.:** The company objected to responding to the subpoena on undue
 13 burden grounds.
- 14 • **FSBO Hotsheet, LLC:** Plaintiffs’ counsel had a call with the owner of the
 15 company, who claimed the company was small and had very little data.
- 16 • **MobileSphere LLC:** After meeting and conferring extensively with counsel for
 17 the company regarding whether it was possible to identify Coldwell Banker
 18 customers of the company, counsel for Plaintiffs determined not to pursue the
 19 subpoena.
- 20 • **Kixie Online, Inc.:** On November 17, 2020, Kixie Online, Inc., produced an
 21 affidavit signed by Jeff Kuei, a “duly authorized custodian of records or other
 22 qualified witness” for Kixie Online, Inc., stating under penalty of perjury that “a
 23 diligent and thorough search was made” for records responsive to the subpoena
 24 and “to the best of [Mr. Kuei’s] knowledge and belief, none of the requested
 25 records currently exist.”
- 26 • **AUM LLC:** A representative of the company searched the company’s files and
 27 stated to Plaintiffs’ counsel by email that there was only one Coldwell Banker
 28 account with the company.
- **Cowboy Concepts LLC:** A representative of the company searched the
 company’s files and stated to Plaintiffs’ counsel by email that there were no
 Coldwell Banker accounts with the company, and there had never been any
 Coldwell Banker accounts with the company.

54. On September 24, 2020, after having spent significant time meeting and conferring
 with counsel for dialing service and lead provider **Arch Telecom, Inc.** (including through two letters
 to counsel for the company and two telephone calls), and having determined that negotiations were
 at an impasse, Plaintiffs filed a motion to compel compliance with their subpoena to Arch Telecom,
 Inc., in the United States District Court for the Western District of Texas. Plaintiffs’ Opposed Motion
 to Compel Compliance with Plaintiffs’ Subpoena to Non-Party Arch Telecom, Inc., *Chinitz v. Realty*
Holdings Corp., No. 1:20-mc-00984-RP (W.D. Tex. Sept. 24, 2020), ECF No. 1. Arch Telecom, Inc.,
 opposed the motion on October 8, 2020, and also moved to quash the subpoena and for a protective
 order. Non-Party Arch Telecom, Inc.’s Motion to Quash and for Protective Order and Response to
 Plaintiffs’ Motion to Compel, *Chinitz v. Realty Holdings Corp.*, No. 1:20-mc-00984-RP (W.D. Tex. Oct.
 8, 2020), ECF No. 6. On October 15, 2020, Plaintiffs filed a reply in support of their motion which

1 also opposed Arch Telecom, Inc.'s motion to quash and for a protective order. On October 22, 2020,
2 the Honorable Magistrate Judge Susan Hightower entered an order denying Plaintiffs' motion to
3 compel compliance with the subpoena and granting in part and denying in part Arch Telecom, Inc.'s
4 motion to quash and for a protective order. Order, *Chinitz v. Realogy Holdings Corp.*, No. 1:20-mc-00984-
5 RP (W.D. Tex. Oct. 22, 2020), ECF No. 8. The court held Plaintiffs had failed to demonstrate that
6 their discovery requests were relevant by providing facts or allegations linking Arch Telecom, Inc., to
7 Plaintiffs' claims or to the defendants in the underlying Action. *Id.* at 4-5. The court further held many
8 of Plaintiffs' requests were facially overbroad. *Id.* at 5. Finally, crediting Arch Telecom, Inc.'s estimate
9 that compliance with the subpoena would cost \$45,000 and 600 hours of work, the court held that
10 compliance with the subpoena would impose an undue burden on Arch Telecom, Inc. *Id.* The court,
11 however, denied Arch Telecom, Inc.'s request for attorneys' fees and costs. *Id.* at 6. Plaintiffs filed
12 objections to the magistrate judge's ruling on November 5, 2020; Arch Telecom, Inc., opposed the
13 objections on November 18, 2020; and Plaintiffs a reply on November 25, 2020. The Honorable
14 Robert Pitman affirmed the magistrate judge's ruling on November 30, 2020. Order, *Chinitz v. Realogy*
15 *Holdings Corp.*, No. 1:20-mc-00984-RP (W.D. Tex. Nov. 30, 2020), ECF No. 13.

16 55. In connection with the subpoena to **RedX LLC**, Plaintiffs' counsel learned from
17 counsel for RedX LLC that the dialer associated with RedX LLC was owned by a separate company
18 that was called Storm LLC. After conducting online research through Utah's Division of Corporations
19 and Commercial Code, Plaintiffs determined that on August 3, 2020, Storm LLC had changed its
20 name to REVN LLC. On or about August 24, 2020, Plaintiffs served a subpoena on REVN LLC.
21 Plaintiffs' counsel subsequently learned from counsel for REVN LLC that it had changed its name
22 again to WAVV Communications LLC ("WAVV"). Plaintiffs' counsel extensively met and conferred
23 telephonically and by email with counsel for WAVV and eventually reached agreement on the content
24 of WAVV's response to the subpoena. On April 26, 2021, Spencer Harman, the President of WAVV,
25 produced a declaration in response to Plaintiffs' subpoena which, among other things, discussed
26 documents that were produced by WAVV in response to the subpoena, including: (1) logs of call
27 activity by Coldwell Banker agents from WAVV's dialers; (2) a list of names and email addresses of
28 the Coldwell Banker agents who made the calls listed in the call logs; and (3) a document containing

1 descriptions of the headings of the columns in the call logs. On June 1, 2021, Spencer Harman
2 produced a supplemental declaration discussing WAVV's records and dialers.

3 56. **PhoneBurner, Inc.** ("PhoneBurner"), served a response to Plaintiffs' subpoena on
4 September 4, 2020. In meeting and conferring with counsel for PhoneBurner, Plaintiffs' counsel
5 learned PhoneBurner had access to logs of calls made through the dialers of **Kai Data LLC** ("Kai
6 Data") and **Symphony Source LLC** ("Symphony Source").⁸ Plaintiffs' counsel extensively met and
7 conferred telephonically and by email with counsel for PhoneBurner and counsel for Kai Data and
8 Symphony Source and eventually reached agreement on the content of PhoneBurner's response to
9 the subpoena. On April 29, 2021, Paul Rydell, the Co-Founder of PhoneBurner, produced a
10 declaration which, among other things, discussed documents that were produced by PhoneBurner in
11 response to the subpoena, including: (1) logs of call activity by Coldwell Banker agents from Kai Data's
12 and Symphony Source's dialers; (2) documents containing addresses of the users of Kai Data's and
13 Symphony Source's dialers who made the calls in the call logs; and (3) documents containing
14 descriptions of the headings of the columns in the call logs. On June 7, 2021, Paul Rydell produced a
15 supplemental declaration discussing PhoneBurner's records and knowledge.

16 57. Autodialer provider **Five9, Inc.** ("Five9"), served objections and responses to
17 Plaintiffs' subpoena in letter form on July 31, 2020. Five9 refused to conduct a search for documents
18 in response many of the requests in the subpoena that was not limited to a search for documents
19 related to a small number of individual Coldwell Banker sales associates. After meeting and conferring
20 telephonically with Five9's counsel on August 19, 2020, and October 8, 2020, counsel for Plaintiffs
21 determined Five9 and Plaintiffs were at an impasse. Plaintiffs filed a letter in this Court seeking to
22 compel a more robust response on October 27, 2020. ECF No. 97. On December 3, 2020, the Court
23 entered an Order directing Plaintiffs to serve Five9 with the discovery dispute and directing Five9 to
24 file a response to Plaintiffs' letter by December 14, 2020. ECF No. 99. Five9 filed its response to
25 Plaintiffs' letter on December 14, 2020. ECF No. 101. Five9 argued that Plaintiffs had not presented
26 any evidence that any calls relevant to the Action were placed using Five9's software and that Plaintiffs'

27 _____
28 ⁸ Separately, Plaintiffs' counsel had also been meeting and conferring with counsel for Kai Data and
Symphony Source (both of which were represented by the same attorney).

1 subpoena was “little more than a vague, overbroad fishing expedition that would represent an
2 unreasonable burden for Five9 to comply with.” *Id.* at 1. On December 15, 2020, Plaintiffs filed a
3 letter request leave to file a short response to Five9’s letter. ECF No. 102.

4 58. On January 11, 2021, the Court entered an Order regarding Plaintiffs’ dispute with
5 Five9. ECF No. 109. The Court stated that the parties had attached exhibit materials such as emails
6 and correspondence that are not consistent with the Court’s standing order on discovery, and it
7 advised all parties and counsel that subsequent non-conforming discovery filings will be summarily
8 stricken and that sanctions may be imposed including monetary and professional conduct sanctions.
9 *Id.* The Court ordered lead counsel for Plaintiffs and Five9 to conduct by January 20, 2021, an in-
10 person meet-and-confer conference via video webinar, which the Court held must last for no less than
11 four hours or until a resolution is reached, whichever is first, and during which the Court prohibited
12 counsel from engaging in any work or communications that were not related to the dispute. *Id.* By
13 January 21, 2021, the Court ordered each lead counsel to file a declaration attesting that they
14 participated in and completed the conference in conformance with the Court’s Order. *Id.* The Court
15 further held that failure of lead counsel to appear and personally handle the discussion for their clients
16 would result in sanctions, including possible exclusion from the lead counsel role at motion hearings
17 and at trial, and that if any disputes remained outstanding after the conference, Plaintiffs could file a
18 discovery letter by January 27, 2021. *Id.* On January 21, 2021, counsel for Plaintiffs and Five9 each
19 filed declarations attesting to compliance with the Court’s Order. ECF Nos. 113-14. During the
20 videoconference, Plaintiffs and Five9 reached the framework of an agreement to resolve the issues
21 detailed in their discovery dispute letters, and on January 19, 2021, they finalized the terms and logistics
22 for that agreement. *Id.*

23 59. On February 22, 2021, Plaintiff Bumpus issued a subpoena to AT&T Inc. seeking
24 records of her incoming and outgoing calls throughout the period from June 11, 2015, to the date of
25 the subpoena. AT&T Inc. produced responsive records on March 11, 2021.

26 60. After the parties had met and conferred multiple times to narrow the issues and
27 Plaintiffs Micheline Peker, Cheryl Rowan, and David Gritz had served amended discovery responses,
28 on June 21, 2021, RBG and Mojo filed a discovery dispute letter seeking to compel Plaintiffs Peker,

1 Rowan, and Gritz to produce their Verizon telephone records for every month that covers the time
2 period of every specific telephone call they received in violation of the TCPA as alleged in the TAC,
3 as requested by RBG's and Mojo's respective requests for production of documents. ECF No. 151.
4 On June 23, 2021, the Court directed Plaintiffs to respond to the letter by July 16, 2021. ECF No.
5 152. Plaintiffs filed a letter in response to RBG's and Mojo's letter on July 16, 2021, stating that
6 Verizon had provided phone records for Plaintiffs Gritz and Rowan, and that a copy had been
7 delivered to Realogy and Mojo. ECF No. 153 at 2. Plaintiffs' letter further stated that Verizon required
8 an amended subpoena regarding Plaintiff Peker's records, but counsel for Realogy had refused to
9 stipulate to extend the discovery period for purposes of the amended subpoena; Plaintiffs proposed
10 that the Court provide an additional extension of the discovery period through the date of Verizon's
11 response to allow Plaintiffs to amend the subpoena to Verizon for Plaintiff Peker's records. *Id.* On
12 September 7, 2021, the Court entered an Order holding that Plaintiffs Gritz and Rowan need take no
13 further action, and that Plaintiff Peker should serve a revised subpoena on Verizon as Plaintiffs
14 outlined in their letter and complete the Verizon subpoena process. ECF No. 158.

15 61. In or around February 2021, Plaintiffs' consulting expert analyzed the call records
16 produced by the various dialers involved in this action and used available databases to identify the
17 carrier to which each class member telephone number was assigned on the date it was called. Plaintiffs
18 then served document subpoenas on 19 telephone carriers in an effort to identify the class members.

19 62. In or around March 2021, Plaintiffs served document subpoenas on the following
20 Coldwell Banker agents, each of whom had placed calls to the named Plaintiffs: Vasu & Associates,
21 Inc. ("V&A"), Charles Lefebvre, Lori Fowler, Yochi Melnick, Jermaine Hendricks, Kerry Martin, and
22 Chris Mitchell. The requests in the subpoenas sought, among other things, the following three general
23 categories of documents: (1) documents relating to training materials provided by Coldwell Banker
24 regarding cold calling, lead generation, telemarketing, and use of autodialers; (2) documents relating
25 to the subpoena recipient's use of autodialers, prerecorded messages, and lead lists; and (3) documents
26 relating to any contact between the subpoena recipient and the relevant named Plaintiff in the Action.

27 63. As indicated above, on March 11, 2021, Plaintiffs served a document subpoena on
28 V&A. V&A served a letter containing only objections on March 24, 2021, taking the position that the

1 requests in the subpoena were unduly burdensome and sought irrelevant documents. After Plaintiff
2 Paramjit Lalli dismissed his claims on April 6, 2021, V&A also began taking the position that Plaintiffs
3 were not entitled to any information sought by the subpoena. Plaintiffs' counsel met and conferred
4 telephonically with counsel for V&A on April 7, 2021, and exchanged three meet and confer letters
5 in an attempt to resolve the dispute, after which Plaintiffs' counsel determined Plaintiffs and V&A
6 were at an impasse. On April 20, 2021, Plaintiffs filed a discovery dispute letter in this Court seeking
7 to compel compliance with the subpoena. ECF No. 140. On April 22, 2021, Plaintiffs filed a
8 withdrawal of their discovery letter brief so the motion could be refiled in the Central District of
9 California. ECF No. 143.

10 64. On May 6, 2021, Plaintiffs filed a motion in the Central District of California to compel
11 V&A to comply with the subpoena. Notice of Motion and Motion to Compel Discovery from Non-
12 Party Vasu & Associates, Inc., *Bumpus v. Realogy Holdings Corp.*, No. 8:21-mc-00022-CJC-DFM (C.D.
13 Cal. May 6, 2021), ECF No. 2. On May 7, 2021, the case was assigned to the Honorable Cormac J.
14 Carney and the Honorable Magistrate Judge Douglas F. McCormick. On May 11, 2021, the court
15 referred the dispute to Magistrate Judge McCormick. On May 18, 2021, Magistrate Judge McCormick
16 entered an Order extending the deadline to file supplemental memoranda under Local Rule 37-2.3,
17 removing the page limit on such memoranda, ordering Plaintiffs and V&A to further meet and confer
18 about the 13 requests for production at issue, and ordering Plaintiffs and V&A to explain in their
19 supplemental memoranda how they proposed to resolve the dispute on a request-by-request basis.
20 Plaintiffs filed a supplemental memorandum on June 4, 2021, and V&A filed an opposition brief on
21 June 9, 2021 (five days late). On June 14, 2021, Magistrate Judge McCormick entered an Order
22 granting the motion to compel. Further Order re: Plaintiffs' Motion to Compel Discovery from Non-
23 Party Vasu & Associates, Inc., *Bumpus v. Realogy Holdings Corp.*, No. 8:21-mc-00022-CJC-DFM (C.D.
24 Cal. June 14, 2021), ECF No. 9. The court stated that the discussions between Plaintiffs and V&A
25 had foundered on a threshold issue, i.e., whether the subpoena served on V&A obligated V&A's sole
26 shareholders and officers, Victor and Suzanne Vasu, to produce responsive documents. *Id.* at 1. The
27 court stated that “[i]t’s hard not to read V&A’s supplemental memorandum and come away with the
28 conclusion that V&A is engaged in gamesmanship or perhaps even obstruction.” *Id.* at 2. The court

1 concluded by ordering V&A and the Vasus to produce all documents responsive to the subpoena
2 within seven days of its order. *Id.* at 3. The Vasus produced documents on June 21, 2021.

3 65. On March 2, 2021, Realogy served notices of its intent to serve document subpoenas
4 on the following entities: Focal Point Data Risk LLC; Sunera LLC; Major League Baseball; Minor
5 League Baseball; Rochester Community Baseball, Inc.; Zillow, Inc.; and Zillow Group, Inc. The
6 documents sought in the subpoenas were as follows:

- 7 • The subpoenas to Focal Point Data Risk LLC and Sunera LLC sought: (1) any
8 writings reflecting Plaintiff Paramjit Lalli's use of the phone number at issue in the
9 Action during the course and scope of his employment with Focal Point Data Risk
10 and Sunera LLC, excluding Mr. Lalli's personnel file, and (2) any online
11 communications reflecting Mr. Lalli's use of the number during the course and
12 scope of his employment with Focal Point Data Risk and Sunera LLC.
- 13 • The subpoenas to Major League Baseball, Minor League Baseball, and Rochester
14 Community Baseball, Inc., sought the same categories of documents as the
15 subpoenas listed above as to Plaintiff Nathan Rowan's use of the phone number
16 at issue in the Action during the course and scope of his employment and
17 association with Major League Baseball, Minor League Baseball, the Rochester Red
18 Wings, Rochester Community Baseball, Inc., the Toronto Blue Jays, the Kansas
19 City Royals, the Norfolk Tides Baseball Club, and the Minnesota Twins.
- 20 • The subpoenas to Zillow, Inc., and Zillow Group, Inc. (together, "Zillow"), sought
21 various documents relating to Plaintiff Micheline Peker and her property in
22 Florida; Plaintiff Daniel Caruso and his property in Florida; and Plaintiff Paramjit
23 Lalli and his property in California. Specifically, the documents requested included
24 but were not limited to: communications between Zillow and the Plaintiffs or real
25 estate agents relating to the properties; Zillow webpages and listings pertaining to
26 the properties; Zillow contact agents forms relating to the properties; all
27 advertising and marketing relating to the properties on Zillow's website; all For
28 Sale By Owner listings relating to the properties on Zillow's website; and emails
sent by Zillow to home buyers regarding the properties when the properties were
initially listed with Zillow.

66. On March 16, 2021, Plaintiffs, after meeting and conferring telephonically with
Realogy, filed a discovery dispute letter with the Court seeking a protective order for Plaintiff Nathan
Rowan with respect to Realogy's subpoenas to Major League Baseball (which had previously employed
Mr. Rowan) and Minor League Baseball (which had never employed Mr. Rowan). ECF No. 125.
Plaintiffs argued Realogy served the subpoenas in an attempt to harass and intimidate Mr. Rowan and
that Mr. Rowan was rightly concerned that professional consequences could follow if Major League
Baseball and Minor League Baseball were required to respond to the subpoenas, particularly since
Realogy could obtain the same information from Mr. Rowan. *Id.* On March 24, 2021, the Court

1 ordered Realogy to file a response by April 7, 2021. ECF No. 130. On March 26, 2021, Realogy filed
2 a letter arguing, among other things, that its subpoenas were narrowly tailored to seek relevant
3 information regarding whether Mr. Rowan's number had been utilized and held out to the public in
4 connection with a business. ECF No. 131. On April 7, 2021, Plaintiffs withdrew their discovery letter,
5 as Mr. Rowan dismissed his claims without prejudice on April 5, 2021. ECF No. 138.

6 67. Plaintiffs' expert Anya Verkhovskaya served her expert report on May 28, 2021. Ms.
7 Verkhovskaya offered four opinions, including that: (1) using the data provided by Realogy and calling
8 platform providers including Mojo, there is a reliable method by which it can be determined with a
9 high degree of certainty which residential telephone numbers received, during the period from June
10 11, 2015, to the date of the report, two or more calls within any 12-month period after having been
11 on the NDNCR for 32 or more days; whether such calls were made by an agent of Realogy; whether
12 such calls were more than zero duration, where appropriate; and whether such calls were treated as
13 connected, based on telephone call dispositions documented by the calling platform providers;
14 (2) using the data provided by Realogy and the calling platform providers, there is a reliable method
15 by which it can be determined with a high degree of certainty which telephone numbers received,
16 during the period from June 11, 2015, to the date of the report, at least one "prerecorded" message
17 based on telephone call dispositions documented by the calling platform providers; whether such calls
18 were more than zero duration, where appropriate; and whether such calls were made by an agent of
19 Realogy; (3) using the data provided by Realogy and the calling platform providers, there is a reliable
20 method by which it can be determined with a high degree of certainty that Plaintiff Sarah Bumpus's
21 telephone numbers received multiple calls from an agent or agents of Realogy after the date she first
22 asked Realogy not to call her; and (4) using the data provided by Realogy and Mojo, there is a reliable
23 method by which the subscribers and/or users of the telephone numbers that received telephone calls
24 made by agents of Realogy, or others on their behalf, during the period from June 11, 2015, to the
25 date of the report, can be identified. On July 14, 2021, Ms. Verkhovskaya served a corrected expert
26 report. Due to a formatting error, Ms. Verkhovskaya's original report did not show all of the
27 underlying files she had used from within ZIP files produced by Mojo, namely, MOJO-Chinitz
28 001.zip, MOJO-Chinitz 002.zip, and MOJO-Chinitz 003.zip. The corrected report rectified this issue.

1 68. Plaintiffs’ expert Randall A. Snyder served his expert report on May 28, 2021. Mr.
2 Snyder opined, among other things, that “based on [his] knowledge, education, experience, expertise,
3 and training, [his] review of the relevant documents, and the facts described [in his declaration], that
4 the Mojo automatic dialing system is telecommunications equipment which technically and
5 electronically initiates telephone calls.” Decl. Snyder ¶ 58.

6 69. Realogy’s expert Margaret Daley served her expert report on May 28, 2021. Ms. Daley
7 opined that the dialing data is incomplete and cannot identify class members; there is no method to
8 identify class member as no business records or consent documentation have been produced from
9 the 105,440 independent contractor sales associates; and Plaintiffs cannot reliably identify telephone
10 numbers associated with businesses. Ms. Daley also contended Plaintiffs Peker and Bumpus were
11 clients of Coldwell Banker and Ms. Bumpus used one of her numbers for business purposes.

12 70. Mojo’s expert Jan Kostyun served his expert report on May 28, 2021. Mr. Kostyun
13 opined, among other things, that determining members of the classes pursuing claims against Mojo
14 would require an individualized review of thousands of messages, and even after this individualized
15 review, dropped messages may not be definitively identified; there is no available method to identify
16 whether the call recipient was the person who registered on the NDNCR and no available classwide
17 method to reliably identify business numbers registered on the NDNCR; and users of the Mojo
18 platform have exclusive control over whether any calls are made on the platform, when the calls are
19 made, to whom the calls are made, and what the content of the calls will be.

20 71. Ms. Verkhovskaya served a rebuttal expert report on June 18, 2021, responding to the
21 criticisms of Ms. Daley and Mr. Kostyun in their original expert reports.

22 72. Mr. Snyder served a rebuttal expert report on June 18, 2021, responding to the
23 criticisms of Ms. Daley and Mr. Kostyun in their original expert reports.

24 73. Ms. Daley served a rebuttal expert report on June 18, 2021, offering a plethora of
25 opinions criticizing Ms. Verkhovskaya’s original expert report, including but not limited to: Ms.
26 Verkhovskaya’s proposed methodology does not identify Plaintiffs; Ms. Verkhovskaya fails to exclude
27 telephone numbers of persons with established business relationships or who consented to be called;
28 Ms. Verkhovskaya’s work is not replicable as she fails to produce supporting workpapers, queries, and

1 source documentation; Ms. Verkhovskaya fails to disclose she will include persons in her class list that
2 her data processors do not associate with the telephone numbers on the dates the calls were made;
3 and Ms. Verkhovskaya's undisclosed methodology for name matching cannot be replicated and is
4 likely highly unreliable.

5 74. Mr. Kostyun served a rebuttal expert report on June 18, 2021, offering numerous
6 opinions criticizing Ms. Verkhovskaya's original expert report and Mr. Snyder's original expert report,
7 including but not limited to: Ms. Verkhovskaya included calls registered on the NDNCR by someone
8 other than the call recipient; Ms. Verkhovskaya's identification of telephone numbers and calls in
9 violation of the NDNCR cannot be verified; Ms. Verkhovskaya's attempted use of LexisNexis to filter
10 out business numbers is packed with problems; and Mr. Snyder provides no valid basis to support his
11 opinion that Mojo's telecommunications equipment itself automatically initiated all telephone calls
12 made using the Mojo dialing platform. Mr. Kostyun served a corrected rebuttal expert report on July
13 14, 2021. On the opening page of the report, he stated that "[t]he single correction in this report is a
14 description of additional documents reviewed in paragraph 5, below."

15 75. On June 7, 2021, Realogy served a document subpoena on Ms. Verkhovskaya, to
16 which Ms. Verkhovskaya responded on June 28, 2021. On June 8, 2021, Mojo served a document
17 subpoena on Ms. Verkhovskaya, to which Ms. Verkhovskaya responded on June 28, 2021. Ms.
18 Verkhovskaya produced 80 Bates stamped pages of responsive documents/files.

19 76. On June 14, 2021, Plaintiffs served document subpoenas on Ms. Daley and Mr.
20 Kostyun. Mr. Kostyun responded on July 1, 2021. Ms. Daley produced 36 Bates stamped pages of
21 documents/files, including Excel worksheets and SQL databases.

22 77. On June 24, 2021, Mojo served a deposition/document subpoena on Mr. Snyder, to
23 which Mr. Snyder responded on July 13, 2021, producing 163 Bates stamped pages of responsive
24 documents/files.

25 **G. Motion for Class Certification, Motion for Leave to File Motion for**
26 **Reconsideration of Order re: Class Certification, Petition for Leave to File**
27 **Interlocutory Appeal Pursuant to Federal Rule of Civil Procedure 23(f), the**
28 **Ninth Circuit's Denial of the Petition, and Motion to Approve Class Notice**

78. Plaintiffs moved for class certification on August 20, 2021, seeking to certify the

1 following three classes bringing claims against the Realogy defendants⁹:

2 **National Do Not Call Registry Nationwide Class (Rule 23(b)(2) and (3))**: All
3 persons in the United States who received two or more calls made by a Coldwell
4 Banker-affiliated Agent using a Mojo, PhoneBurner, and/or Storm dialer in any 12-
5 month period on a residential landline or cell phone number that appeared on the
6 National Do Not Call Registry for at least 31 days for the time period beginning June
7 11, 2015, to present, and reflected in the call records listed in Appendix A.

8 **National Internal Do Not Call Class (Rule 23(b)(2))**: All persons in the United
9 States who received, in any 12-month period, two or more calls promoting Coldwell
10 Banker's services and made by a Coldwell Banker-affiliated Agent to their residential
11 landline or cell phone number, for the time period beginning June 11, 2015, to present.
12 These persons seek only injunctive relief.

13 **National Artificial or Prerecorded Message Class (Rule 23(b)(2) and (3))**: All
14 persons in the United States who received a call on their residential telephone line or
15 cell phone number with an artificial or prerecorded message, as indicated by the
16 following call disposition codes: (1) "Drop Message" (if using the Mojo dialer); (2)
17 "ATTENDED_TRANSFER" (if using the Storm dialer); and (3) "VOICEMAIL" (if
18 using a PhoneBurner dialer) in the call records listed in Appendix A and made by a
19 Coldwell Banker-affiliated Agent for the time period beginning June 11, 2015, to
20 present.

21 ECF No. 155 at 13. Realogy and Mojo opposed the motion on September 24, 2021, ECF Nos. 159,
22 165, and Plaintiffs filed replies on October 8, 2021, ECF Nos. 175-76. Realogy filed objections to
23 Plaintiffs' reply briefs (on the ground that the filing of two reply briefs evaded the page limit in the
24 Court's standing order) and to evidence in the reply briefs on October 15, 2021. ECF No. 179.

25 79. On October 8, 2021, Realogy filed an administrative motion for leave to file a
26 supplemental declaration in opposition to the motion for class certification on the ground that it had
27 not received Verizon call records pertaining to Plaintiff Peker's cellular telephone number until after
28 it had filed its brief opposing class certification. ECF No. 173 at 2. On October 12, 2021, Plaintiffs
filed a response to the administrative motion stating they did not oppose it but they requested leave
to file a supplemental response addressing only the issues raised in Realogy's proposed supplemental
declaration. ECF No. 178. On October 18, 2021, the Court entered an Order that allowed Realogy to
file the supplemental declaration and directed the Parties to meet and confer about dates for filing an
amended opposition and amended reply to the motion for class certification to account for any
arguments related to the supplemental declaration, to meet and confer about a new hearing date, and

⁹ Plaintiffs also sought certification of a subclass bringing claims against Mojo.

1 to file a joint statement of their agreement by November 8, 2021. ECF No. 180. On October 19, 2021,
2 the Parties filed the joint statement proposing a briefing schedule and a new hearing date. ECF No.
3 181. On October 21, 2021, the Court entered an Order approving the proposed briefing schedule but
4 declining to set a hearing date. ECF No. 182. Realogy and Mojo filed amended opposition briefs on
5 October 26, 2021, ECF Nos. 183, 186, and Plaintiffs filed amended replies on November 2, 2021,
6 ECF Nos. 188, 190. Mojo and Realogy filed objections to Plaintiffs' reply evidence on November 9,
7 2021. ECF Nos. 192-93.

8 80. On March 23, 2022, the Court granted in part Plaintiffs' motion for class
9 certification,¹⁰ certifying the Certified Classes; appointing Sarah Bumpus as the representative of the
10 NDNC class and the Internal DNC class and Micheline Peker and Cheryl Rowan as the
11 representatives of the Prerecorded Message class; and appointing Tycko & Zavareei LLP, Reese LLP,
12 and Kaufman P.A. as counsel for all three classes. ECF No. 223.

13 81. On March 30, 2022, Realogy filed a motion pursuant to Civil Local Rule 7-9 for leave
14 to file a motion for reconsideration of the Court's Order regarding class certification, on the ground
15 that on March 25, 2022, Plaintiffs filed a motion for leave to file a Fourth Amended Class Action
16 Complaint to add a new TCPA claim alleging violation of 47 U.S.C. § 227(b)(1)(A)(iii). ECF No. 240.
17 On August 18, 2022, the Court entered an Order denying the motion for leave to file a motion for
18 reconsideration for lack of good cause under Civil Local Rule 7-9. ECF No. 291.

19 82. On March 31, 2022, Plaintiffs and Mojo filed a stipulation dismissing Mojo from the
20 Action without prejudice. ECF No. 241. On the same day, the Court entered an Order dismissing
21 Mojo without prejudice. ECF No. 243.

22 83. On April 6, 2022, Realogy filed a petition with the Ninth Circuit for permission to file
23 an interlocutory appeal of the class certification order pursuant to Federal Rule of Civil Procedure
24 23(f). Defendants/Petitioners' Petition for Permission to Appeal Class-Certification Order Pursuant
25 to Federal Rule of Civil Procedure 23(f), *Bumpus v. Realogy Holdings Corp.*, No. 22-80027 (9th Cir. Apr.
26 6, 2022), ECF No. 1-2. Plaintiffs opposed the petition on April 18, 2022, and on May 26, 2022, the
27

28 ¹⁰ The Court denied certification of the subclass bringing claims against Mojo.

1 Ninth Circuit entered an Order denying it, ECF No. 272.

2 84. Plaintiffs filed a motion for approval of class notice on April 22, 2022, proposing Epiq
3 Class Action & Claims Solutions, Inc. (“Epiq”), as the notice administrator. ECF No. 254 at 1. Realogy
4 opposed the motion on May 6, 2022, arguing Plaintiffs should use the known names and addresses
5 already provided in the dialer records to determine where to send notice; any reverse lookup data
6 should be provided to Realogy; the content of the notice was deficient because it did not identify the
7 Internal DNC class, class members could not opt out electronically, the motion did not provide
8 sufficient information about the content of the notice website, and the draft notices contained
9 language that was not neutral or accurate; and notice should be stayed until after the Ninth Circuit
10 ruled on the 23(f) petition. ECF No. 267. Plaintiffs replied on May 9, 2022, arguing they did not
11 propose to ignore the contact information in the dialer records; they did not object to providing the
12 reverse lookup data to Realogy so long as it only used the data for claims administration purposes; the
13 content of the notices was appropriate because the Internal DNC class, an injunctive relief class, did
14 not need to be identified, the language was accurate and neutral, submission of opt outs by mail is
15 standard and complies with due process, and the content of the proposed website was sufficiently
16 identified in Plaintiffs’ filings; and notice should not be stayed while the Rule 23(f) petition was
17 pending because, among other reasons, such petitions are seldom granted. ECF No. 268. On May 26,
18 2022, the Court held a hearing on the motion and ordered notice to go out; during the hearing, the
19 Court asked Plaintiffs to remove references to a trial date from the notice and to ensure there would
20 be 90 days to opt out of the class. *See* ECF No. 273; Tr. Hearing, May, 26, 2022, at 3, 7 (“[I]t’s full
21 speed ahead.”), 9.

22 85. On October 7, 2022, Plaintiffs filed a declaration by Cameron R. Azari, Esq., of Epiq
23 discussing the implementation and adequacy of the class notice program. ECF No. 305. The notice
24 program reached approximately 86.6% of the identified NDNCR and Prerecorded Message classes.
25 ECF No. 305-1 at ¶ 7. As of October 5, 2022, Epiq had received 20 valid requests for exclusion and
26 seven incomplete requests. *Id.* at ¶ 22 & Attachment 4. Mr. Azari concluded that the notice program
27 “provided for the best notice practicable under the circumstances of this case, conformed to all aspects
28 of the Rule 23, and comported with the guidance for effective notice set out in the Manual for

1 Complex Litigation, Fourth,” *id.* at ¶ 25, and “[t]he Notice Program schedule afforded sufficient time
2 to provide full and proper notice to Classes before any opt-out deadline,” *id.* at ¶ 26.

3 **H. Motions for Summary Judgment and Partial Summary Judgment, *Daubert***
4 **Motions, and Motion to Correct Third Amended Class Action Complaint**

5 86. On February 25, 2022, Plaintiffs moved for partial summary judgment against Realogy
6 on two discrete issues. ECF No. 198. First, Plaintiffs sought a ruling that as a matter of law, RBG was
7 vicariously liable under the doctrines of apparent authority and ratification for any calls deemed at trial
8 to be in violation of the TCPA that were made by or on behalf of Coldwell Banker sales associates.
9 *Id.* at 1-2. Second, Plaintiffs sought summary judgment on Realogy’s affirmative defense of consent
10 with respect to Plaintiffs’ claims for violation of 47 C.F.R. § 64.1200(c)(2)(ii) with respect to the
11 NDNC class and 47 U.S.C. § 227(b)(1)(B) with respect to the Prerecorded Message class. *Id.* at 2-3.
12 On March 25, 2022, Realogy opposed the motion, arguing (1) Realogy was not vicariously liable for
13 the alleged calls by independent sales associates because, *inter alia*, apparent authority and ratification
14 were inapplicable as a matter of law and (2) there were triable issues of fact concerning Realogy’s
15 consent defense because, *inter alia*, Bumpus indisputably provided consent and numerous individual
16 mini-trials would be necessary to ascertain whether consent was provided to the independent sales
17 associates in connection with the other alleged calls. ECF No. 233. On April 22, 2022, Plaintiffs filed
18 a reply. ECF No. 259. On April 29, 2022, Realogy filed objections to evidence in the reply brief. ECF
19 No. 265.

20 87. On February 25, 2022, Plaintiffs also moved for partial summary judgment against
21 Mojo, asking the Court to hold as a matter of law that Mojo was directly liable under the TCPA for
22 initiating prerecorded calls to the proposed Mojo subclass. ECF No. 201. Mojo opposed the motion
23 on March 25, 2022, arguing the electronic dialing of numbers does not constitute physically placing
24 calls; there was no evidence that Mojo “initiated” the calls or messages at issue; and Plaintiffs’ motion
25 depended on mischaracterizations of Mojo and its platform. ECF No. 236. Prior to the deadline for
26 Plaintiffs’ reply, on March 23, 2022, the Court denied certification of the proposed Mojo subclass,
27 ECF No. 223, and on March 31, 2022, Mojo was dismissed from the case, ECF Nos. 241-42. Plaintiffs
28 did not file a reply.

1 88. On February 25, 2022, Plaintiffs also moved to exclude Realogy’s expert Margaret
2 Daley. ECF No. 212. Plaintiffs asked the Court to exclude all of Ms. Daley’s legal discussions, legal
3 conclusions, and opinions based on erroneous conceptions of the law; Ms. Daley’s speculative
4 opinions; Ms. Daley’s opinions based on unreliable methodologies; and Ms. Daley’s irrelevant
5 opinions. *Id.* On March 25, 2022, Realogy opposed the motion, arguing Ms. Daley was a qualified
6 expert in data analytics; her opinions were not legal conclusions or speculative; her methodologies
7 were all reliable; and her opinions were relevant. ECF No. 235. On April 22, 2022, Plaintiffs filed a
8 reply. ECF No. 257.

9 89. Plaintiffs also moved on February 25, 2022, to exclude Mojo’s expert Jan Kostyun.
10 ECF No. 209. Among other things, Plaintiffs asked the Court to exclude Mr. Kostyun’s speculative
11 opinions, his personal opinions, his legal analysis and legal opinions, and his opinions premised on
12 incorrect legal assumptions. *Id.* Mojo opposed the motion on March 25, 2022, arguing Mr. Kostyun’s
13 criticisms of Ms. Verkhovskaya were based on concrete evidence and established errors, not
14 speculation; Mr. Kostyun’s conclusions were not “personal opinions,” including his criticisms of
15 Soundex and PacificEast; and Mr. Kostyun did not provide any legal analysis or legal opinions. ECF
16 No. 237. On April 22, 2022, although Mojo had been dismissed from the case, Plaintiffs filed a reply
17 asking the Court to bar Realogy from relying on Mr. Kostyun’s opinions or subpoenaing him to
18 provide expert testimony at trial. ECF No. 261.

19 90. On February 25, 2022, Realogy moved for summary judgment and/or partial summary
20 judgment as to Plaintiffs’ claims. ECF No. 205. Realogy argued, among other things, that Plaintiffs
21 Peker and Rowan lacked standing because they had no knowledge, and were unaware, of the alleged
22 prerecorded messages; Peker and Rowan did not receive any prerecorded messages on their residential
23 telephone lines from Realogy; Bumpus only received one actionable call; Bumpus had an established
24 business relationship with NRT West, Inc.; Bumpus lacked standing to seek injunctive relief; Realogy
25 was not directly liable for any calls to Plaintiffs; and Realogy was not vicariously liable for any calls to
26 Plaintiffs. *Id.* On March 25, 2022, Plaintiffs opposed the motion, arguing, among other things, that
27 Realogy inflicted concrete harms on Plaintiffs Peker and Rowan sufficient to establish standing
28 because they received unwanted prerecorded telemarketing messages and the law does not require

1 them to remember the calls; Plaintiffs Peker and Rowan received prerecorded messages in violation
2 of 47 U.S.C. § 227(b)(1); Plaintiff Bumpus received more than one actionable call within a 12-month
3 period and terminated her business relationship with Coldwell Banker; Bumpus had standing to seek
4 injunctive relief; and Realogy was vicariously liable for the calls of the Coldwell Banker agents as a
5 matter of law. ECF No. 228. On April 22, 2022, Realogy filed a reply. ECF No. 255.

6 91. On February 25, 2022, Realogy also moved to exclude Ms. Verkhovskaya. ECF No.
7 206. Realogy argued, among other things, that Ms. Verkhovskaya was not qualified to provide the
8 opinions she offered; Ms. Verkhovskaya's Soundex name matching methodology was unreliable; Ms.
9 Verkhovskaya concealed and misrepresented data; Ms. Verkhovskaya relied on insufficient facts and
10 data including insufficient call records, insufficient Pacific East data, insufficient LexisNexis data, and
11 insufficient data regarding residential lines; Ms. Verkhovskaya improperly included zero duration calls;
12 and Ms. Verkhovskaya's opinions should also be excluded pursuant to Rule 37(c)(1) because her
13 original expert report failed to identify all of the facts and data she relied upon in forming her opinion.
14 *Id.* On March 25, 2022, Plaintiffs filed a consolidated brief opposing Realogy's motion and Mojo's
15 motion to exclude Ms. Verkhovskaya, discussed in more detail below. ECF No. 239. On April 22,
16 2022, Realogy filed a reply. ECF No. 258.

17 92. For its part, on February 25, 2022, Mojo moved for summary judgment on Plaintiffs'
18 claims. ECF No. 204. Mojo argued, among other things, that there was no evidence that Mojo initiated
19 the calls or messages at issue; there was no evidence that Peker received any prerecorded message on
20 a residential telephone line; and there was no evidence that Peker suffered a "concrete harm" as
21 required to establish Article III standing. *Id.* On March 25, 2022, Plaintiffs opposed the motion,
22 arguing, among other things, that Mojo was directly liable for initiating prerecorded calls to the
23 proposed Mojo subclass; Peker received prerecorded messages in violation of 47 U.S.C. § 227(b)(1);
24 and Peker had standing because she received two prerecorded voice calls initiated by Mojo. ECF No.
25 232. Mojo was dismissed from the case before the deadline for its reply.

26 93. Mojo also moved on February 25, 2022, to exclude Ms. Verkhovskaya. ECF No. 202.
27 Mojo argued, among other things, that Ms. Verkhovskaya did not qualify as an expert; Ms.
28 Verkhovskaya excluded Plaintiff Peker as a class member; zero-duration "drop message" calls were

1 not delivered; Soundex was unreliable; Ms. Verkhovskaya intentionally prevented replication of her
2 methodology; and Ms. Verkhovskaya relied upon “black box” techniques. *Id.* As stated above, on
3 March 25, 2022, Plaintiffs filed a consolidated brief opposing Realogy’s motion and Mojo’s motion to
4 exclude Ms. Verkhovskaya. ECF No. 239. Plaintiffs argued, among other things, that Ms.
5 Verkhovskaya was well qualified to serve as an expert here; Ms. Verkhovskaya’s use of Soundex was
6 proper; Realogy’s assertions that Ms. Verkhovskaya concealed or misrepresented data were
7 unfounded; Ms. Verkhovskaya properly relied on call records produced by dialer companies that had
8 been kept in the ordinary course of business; Ms. Verkhovskaya properly relied on PacificEast’s data
9 regarding the NDNCR; Ms. Verkhovskaya’s use of LexisNexis to identify business, residential, and
10 government telephone numbers was sound; Ms. Verkhovskaya’s decision to include certain zero
11 duration calls does not cast doubt on the reliability of her methodology; Ms. Verkhovskaya’s
12 methodology did identify Plaintiff Peker’s number; established business relationships and consent
13 were affirmative defenses on which Realogy bore the burden; Ms. Verkhovskaya’s methodology was
14 replicable; and Ms. Verkhovskaya’s testimony should not be excluded under Rule 37(c)(1) because she
15 had properly disclosed all material she relied upon and all the files within her possession that were
16 responsive to Realogy’s discovery requests. *Id.* Mojo was dismissed before its reply was due.

17 94. Mojo also moved on February 25, 2022, to exclude Mr. Snyder. ECF No. 203. Mojo
18 argued that Mr. Snyder’s opinions were irrelevant because dialing, technical initiation, and electronic
19 initiation are irrelevant to the FCC’s “initiation” analysis and spoofing is irrelevant to the issues before
20 the Court; and that any probative value of Mr. Snyder’s opinions was substantially outweighed by the
21 danger of confusing and misleading the jury. *Id.* On March 25, 2022, Plaintiffs opposed the motion,
22 arguing that Mr. Snyder’s opinions were relevant and that Mr. Snyder’s opinions posed no risk of
23 prejudice because he only provided technical information, not legal conclusions. ECF No. 230. Mojo
24 was dismissed before its reply was due.

25 95. On March 25, 2022, Plaintiffs filed a motion for leave to conform the claims asserted
26 in the pleading to the Certified Classes. ECF No. 231. Plaintiffs sought leave to file a proposed Fourth
27 Amended Class Action Complaint that clarified that Plaintiffs’ prerecorded message claims are
28 brought under 47 U.S.C. § 227(b)(1)(A)(iii) and (b)(1)(B). *Id.* at 1. Plaintiffs argued that good cause

1 existed for the amendment because Plaintiffs had consistently, diligently litigated the case for years in
2 accordance with the Prerecorded Message class definition, which covers both residential telephone
3 lines and cellular telephones, as demonstrated by numerous documents and filings. *Id.* at 1-4. Plaintiffs
4 asked the Court to allow them to make a “technical clarification” to the pleading so that it referenced
5 both § 227(b)(1)(A)(iii) and § 227(b)(1)(B). *Id.* at 4. Realogy opposed the motion on April 8, 2022,
6 arguing Plaintiffs had not been diligent and permitting the amendment would be unduly prejudicial to
7 Realogy given the late stage of the litigation. ECF No. 248. On April 15, 2022, Plaintiffs filed a reply,
8 arguing Realogy had “always known” Plaintiffs were asserting a prerecorded voice claim under the
9 TCPA based on Realogy agents’ calls to cellular telephone numbers, based on numerous documents
10 and filings, and Plaintiffs were not asserting a new claim based on a new theory. ECF No. 252.

11 96. On May 11, 2022, the Court entered an Order denying all of the summary judgment
12 motions. ECF No. 269. The Court held the reason for the denial was “straightforward.” *Id.* at 1. “As
13 the parties’ own motion papers amply demonstrate, this case is replete with disputes of material fact
14 that a jury will be required to resolve.” *Id.* “Each party filed hundreds of pages in briefing, declarations,
15 and exhibits with their motions.” *Id.* “While volume alone is not necessarily fatal to a summary
16 judgment motion, these filings reflect an almost total disagreement between the parties about the facts
17 of the case.” *Id.*

18 The Court also ruled on Plaintiffs’ motion for leave to conform their pleading. ECF No. 269
19 at 2. The Court held that Realogy’s arguments were “form over substance”; that “Plaintiffs have
20 indicated that they inadvertently omitted a reference to the cell phone provision for Peker and
21 Rowan,” which was “in effect a scrivener’s error”; and that Realogy “cannot say that it is in any way
22 surprised or disadvantaged by the drafting omission.” *Id.* Consequently, the Court deemed the TAC
23 to allege a claim for Peker and Rowan under 47 U.S.C. § 227(b)(1)(A)(iii) and terminated the motion.
24 *Id.*

25 With respect to the *Daubert* challenges to the expert reports of Ms. Verkhovskaya and Ms.
26 Daley, the Court stated that it did not rely on either report for its order and that they would be
27 addressed in a separate order. *Id.* at 2-3.

28 97. On August 16, 2022, the Court entered an order denying the motions to exclude the

1 opinions of Ms. Verkhovskaya and Ms. Daley, holding that the “objections to go the weight of the
2 experts’ testimony, not their reliability” and that “[c]ounsel will have an opportunity to cross-examine
3 the witnesses at trial.” ECF No. 290. The Court also stated that “[t]o the extent that Daley’s report
4 includes legal conclusions, no testimony on legal conclusions will be permitted at trial.” *Id.*

5 **I. Pretrial Filings and Trial Scheduling**

6 98. On August 14, 2020, the Court entered a Scheduling Order setting the pretrial
7 conference for January 6, 2022, at 1:30 p.m. and the trial for March 7, 2022, at 9:00 a.m. ECF No. 86.

8 99. On February 8, 2021, the Court entered an Amended Scheduling Order setting the
9 pretrial conference for July 28, 2022, at 10:00 a.m. and the trial for August 22, 2022, at 9:00 a.m. ECF
10 No. 117. On December 27, 2021, the Court entered an Amended Scheduling Order that maintained
11 the same dates for the pretrial conference and trial. ECF No. 195.

12 100. On July 20, 2022, the Court entered an Order directing the Parties to propose a new
13 trial date by July 27, 2022. ECF No. 279. The Parties submitted competing proposals on July 27, 2022.
14 ECF Nos. 280-81.

15 101. On August 1, 2022, the Court set the pretrial conference for November 10, 2022, at
16 1:30 p.m. and trial for November 28, 2022, at 9:00 a.m. ECF No. 282.

17 102. In accordance with the Court’s Standing Order for Civil Jury Trials, the Parties
18 engaged in extensive and detailed meet-and-confer discussions related to the Court’s required pretrial
19 filings beginning in mid-September 2022, including numerous calls and exchanges of drafts of the
20 required pretrial documents.

21 103. On October 13, 2022, Plaintiffs served eight motions *in limine* on Realogy, and Realogy
22 served eight motions *in limine* on Plaintiffs. On October 23, 2022, Plaintiffs served oppositions to six
23 of the motions *in limine* and statements of nonopposition to the other two.

24 104. On October 24, 2022, the Court entered an Order stating that it had a criminal trial
25 with priority over this case and vacating the pretrial conference and trial. ECF No. 317. The Court
26 directed the Parties to propose by November 24, 2022, a trial date in April 2023. *Id.* On November
27 23, 2022, the Parties filed a joint notice stating that “[d]ue to scheduling conflicts throughout April,
28 the parties’ first mutually available date for the start of trial is May 1, 2023,” and “[t]herefore, the

1 parties jointly and respectfully request that this case be set for trial beginning May 1, 2023.” ECF No.
2 318.

3 105. On January 18, 2023, the Court set the pretrial conference for April 27, 2023, at 1:30
4 p.m. and the trial for May 15, 2023, at 9:00 a.m. ECF No. 322.

5 106. In accordance with the Court’s Standing Order for Civil Jury Trials, the Parties
6 subsequently engaged in extensive and detailed meet-and-confer discussions related to the Court’s
7 required pretrial filings, including numerous calls and exchanges of drafts of the required pretrial
8 documents.

9 107. On March 29, 2023, Plaintiffs filed a motion to modify the class definition and dismiss
10 without prejudice the internal do-not-call claim. ECF No. 323. Plaintiffs sought to exclude seven
11 categories of calls from the Certified Classes, including calls with zero duration with the disposition
12 “No Answer,” “NO_ANSWER,” or “NOANSWER”; calls with the disposition “NOT YET
13 INTERESTED”; PhoneBurner calls where the “voicemail” and “connection” fields in the call logs
14 indicated the caller did not leave a prerecorded message; calls made by agents whose names were
15 identified as Coldwell Banker-affiliated by Soundex; calls where any field contained the word “Test”;
16 calls where the prerecorded message identified the agent as affiliated with a brokerage other than
17 Coldwell Banker; and calls where only one call was made to a number on the NDNCR in a 12-month
18 period after the foregoing exclusions were made. *Id.* at 3-4. Realogy opposed the motion on April 12,
19 2023, and argued the Court should decertify the classes. ECF No. 329. Plaintiffs filed a reply on April
20 13, 2023. ECF No. 359.

21 108. On March 31, 2023, Plaintiffs and Realogy stipulated to the dismissal of all of David
22 Gritz’s claims in the Action with prejudice. ECF No. 326. The Court so ordered the stipulation on
23 April 3, 2023. ECF No. 327.

24 109. Plaintiffs’ counsel observed and participated in three focus groups comprised of mock
25 jurors from the San Francisco area on March 29 and 30, 2023. The focus groups were conducted in
26 San Francisco by James B. Lees of Hunt & Lees L.C. It was helpful, in preparation for trial, for
27 Plaintiffs’ counsel to see reactions of lay people with no knowledge of Plaintiffs’ claims to Plaintiffs’
28 case and supporting evidence.

1 110. On April 13, 2023, the Parties made pretrial filings including the following:

- 2
- 3 • Joint proposed voir dire, ECF No. 331;
 - 4 • Joint witness list, ECF No. 332;
 - 5 • Trial briefs, ECF Nos. 333, 342;
 - 6 • Joint proposed verdict forms, ECF No. 334;
 - 7 • Three motions *in limine* by Plaintiffs and responses thereto by Realogy, ECF Nos. 335-37;
 - 8 • Joint exhibit lists, ECF No. 341;
 - 9 • Eight motions *in limine* by Realogy and responses thereto by Plaintiffs, ECF Nos. 343-50;
 - 10 • Joint pretrial statement, ECF No. 353; and
 - 11 • Joint proposed jury instructions, ECF No. 354.

12 111. On April 24, 2023, the Court entered an Order vacating the pretrial conference and
13 trial in light of the Court’s trial schedule for cases with priority over this case. ECF No. 362. The Court
14 directed the Parties to propose by May 22, 2023, a trial date in fall 2023. *Id.* On May 22, 2023, the
15 Parties filed a joint notice stating that “[d]ue to scheduling conflicts, the parties’ first mutually available
16 date for the start of trial is December 18, 2023” and “[t]herefore, the parties jointly and respectfully
17 request that this case be set for trial beginning December 18, 2023.” ECF No. 363.

18 112. On May 25, 2023, the Court entered an Order setting the pretrial conference for
19 January 11, 2024, at 1:30 p.m. and trial for January 29, 2024, at 9:00 a.m. ECF No. 364.

20 113. On September 22, 2023, Plaintiffs filed an administrative motion requesting a case
21 management conference to seek guidance from the Court regarding two issues: (1) trial structure and
22 format and (2) Plaintiffs’ motion to modify the class definition and Realogy’s opposition thereto. ECF
23 No. 369. Plaintiffs stated that the Parties’ positions on the structure and format of the trial were
24 “widely divergent,” as Plaintiffs proposed a single class action trial that would take approximately five
25 days, while Realogy proposed a trial to resolve the individual Plaintiffs’ claims in their entirety and the
26 common elements of the class TCPA claims and Plaintiffs’ veil-piercing claims, followed by separate
27 trials on individual issues related to liability and vicarious liability on the class claims. *Id.* at 2. Plaintiffs
28 stated that the Parties’ positions on the motion to modify the class definition were also “plainly . . .
incompatible.” *Id.* at 3.

114. On November 27, 2023, the Court entered an Order scheduling a hearing on the class
definition issue for February 8, 2024, and vacating the pretrial conference and trial pending further
order. ECF No. 370.

1 115. On February 5, 2024, the Court entered an Order continuing the hearing on the class
2 definition issue to February 15, 2024, at 10:00 a.m. ECF No. 371.

3 116. On February 5, 2024, Plaintiffs filed a corrected motion to modify the class definition,
4 correcting some numbers in the motion that had inadvertently been stated incorrectly. ECF No. 372.
5 On March 27, 2024, Realogy refiled its opposition papers without redactions. ECF No. 376.

6 117. On February 7, 2024, Realogy filed an unopposed motion to continue the hearing on
7 the class definition issue because Realogy’s lead trial counsel was to be in trial in another case on
8 February 15, 2024. ECF No. 373.

9 118. On February 8, 2024, the Court entered an Order continuing the hearing on the class
10 definition issue to May 23, 2024, at 10:00 a.m. ECF No. 374.

11 119. On May 7, 2024, the Court entered an Order continuing the hearing on the class
12 definition issue to May 30, 2024, at 10:00 a.m. ECF No. 382.

13 120. On May 14, 2024, Plaintiffs filed an unopposed motion to reschedule the hearing on
14 the class definition issue because trial counsel for Plaintiffs would be in hearings for other cases on
15 May 30, 2024. ECF No. 383.

16 121. On May 14, 2024, the Court entered an Order continuing the hearing on the class
17 definition issue to June 20, 2024, at 10:00 a.m. ECF No. 384.

18 122. On June 20, 2024, the Court held a hearing on Plaintiffs’ motion to narrow the classes
19 and Realogy’s request to decertify the classes. ECF No. 385. The Court directed Plaintiffs to file by
20 July 5, 2024, “a declaration stating with specificity the methods used to determine the proposed
21 exclusions from the certified classes.” *Id.* Furthermore, the Court directed Plaintiffs that “[f]or each
22 category of proposed exclusions, the declaration must state whether the method involved listening to
23 a call recording, and if so, the extent to which the exclusion is based on a manual review of recordings,”
24 “in addition to a full description of the method that was used.” *Id.*

25 123. On July 5, 2024, Plaintiffs filed the Declaration of John W. Barrett in support of their
26 motion to modify the class definition as ordered by the Court. ECF No. 389. The declaration explained
27 each step leading to Plaintiffs’ proposed modified class definition in detail with respect to all seven
28 categories of proposed exclusions. *Id.* For each category, Plaintiffs stated whether the method involved

1 listening to a call recording, and if so, the extent to which the exclusion was based on manual review
2 of the recordings. *Id.*

3 124. On August 15, 2024, the Court entered an Order denying Plaintiffs' request to modify
4 the class definition without prejudice. ECF No. 390. The Court stated:

5 In effect, the request is an improper motion for reconsideration that does not satisfy
6 any of the elements for that. See Civil L.R. 7-9. The request was filed approximately
7 one year after the Court's class certification order, Dkt. No. 223, and just a few weeks
8 before the original trial date. The Court declines to change the certification order at
9 this late date, particularly in light of the prejudice to defendant, which has prepared
10 experts, witness, and evidence for trial on the basis of that order. The parties will be
11 free at trial to examine plaintiffs' experts with respect to the issues in the modification
12 request. After a full record is developed at trial, plaintiffs may renew their request, and
13 defendants may propose to decertify some or all of the classes, as the evidence
14 warrants.

15 *Id.* On the same day, the Court entered an order lifting the stay and setting the pretrial conference for
16 January 23, 2025, at 1:30 p.m. and trial for February 3, 2025. ECF No. 391.

17 **J. Mediations and Settlement Conference**

18 125. Plaintiffs and Realogy mediated with the Honorable Edward A. Infante (Ret.) of JAMS
19 on January 4, 2022. The mediation terminated with the Parties at an impasse. ECF No. 196.

20 126. Pursuant to an Order of the Court, Plaintiffs and Realogy took part in a settlement
21 conference with the Honorable Magistrate Judge Thomas S. Hixson on June 27, 2022, via Zoom. *See*
22 ECF Nos. 226, 246, 276. The settlement conference terminated with the Parties again at an impasse.
23 ECF No. 276.

24 127. Plaintiffs and Realogy mediated with Bruce A. Friedman, Esquire, of JAMS on August
25 25, 2022. The mediation terminated with the Parties again at an impasse, after less than half of a day.

26 **K. Settlement**

27 128. On October 10, 2024, counsel for Plaintiffs had a discussion with counsel for Realogy
28 about the possibility of settlement and, generally speaking, the terms on which the Parties might be
able to agree to a settlement. The discussions suggested the Parties were close enough together with
respect to settlement relief that settlement might be possible.

129. On or about October 31, 2024, Plaintiffs received a settlement offer from Realogy.

130. On November 4, 2024, Plaintiffs provided a revised settlement demand to Realogy.

1 On November 5, 2024, Realogy asked Plaintiffs to provide definitions for Plaintiffs' proposed
2 settlement classes.

3 131. On November 6, 2024, Plaintiffs sent Realogy a proposed narrowed definition for the
4 settlement NDNCR class which eliminated zero-duration calls with the dispositions "No Answer,"
5 "NO_ANSWER," and "NOANSWER." Plaintiffs also provided a revised settlement demand.

6 132. On November 7, 2024, Realogy sent Plaintiffs a revised settlement offer. Plaintiffs
7 sent a revised demand on the same day, and on the same day Realogy responded with a revised offer.

8 133. On November 9, 2024, Plaintiffs conveyed a revised demand to Realogy, and Realogy
9 responded with a revised offer.

10 134. On November 14, 2024, the Parties reached a settlement in principle that included a
11 common settlement fund of \$20 million, \$1 million of which Realogy would fund shortly after
12 preliminary approval for notice and administration and the remainder of which Realogy would fund
13 upon final approval.

14 135. Realogy began work on a draft of the settlement agreement, and the Parties drafted a
15 notice of settlement. The Parties also conducted legal research and had discussions related to
16 developing certain details of the settlement.

17 136. The Parties filed the notice of settlement on December 13, 2024. The noticed included
18 a request that the Court set a deadline of January 31, 2025, for Plaintiffs to file a motion for preliminary
19 approval and for the Court to stay all pretrial deadlines to allow the Parties to focus on finalizing and
20 presenting the proposed settlement for review.

21 137. On January 9, 2025, the Court denied the request to stay all pretrial deadlines. The
22 Court stated that a stay will not be considered until an application for preliminary approval of a
23 proposed classwide settlement is filed.

24 138. The Parties then negotiated the precise terms of the Settlement Agreement. On
25 January 20, 2025, the Settlement Agreement was fully executed. When the lists of telephone numbers
26 in the Settlement Classes are consolidated into a single list and duplicates are removed, there are
27 298,494 unique telephone numbers in the Settlement Classes. *See* Stlmt. Agmt., Ex. C. A single person
28 might use more than one number on the list, however.

1 **L. Preliminary Approval**

2 139. On January 20, 2025, Plaintiffs filed a motion for preliminary approval of the
3 Settlement and certification of the Settlement Class. ECF No. 395.

4 140. The Court held a hearing on the motion on February 27, 2025, and entered an order
5 granting preliminary approval on March 10, 2025, ECF No. 400.

6 141. In accordance with the Court’s instructions at the hearing, the Settlement
7 Administrator filed a revised declaration regarding the Notice Plan on March 13, 2025, ECF No. 401.

8 **II. Continued Litigation of This Complex Action Poses Substantial Risk**

9 142. While Plaintiffs’ Counsel are confident in the strength of Plaintiffs’ claims, Plaintiffs
10 would face substantial risks should this action proceed in litigation. Plaintiffs’ claims could be
11 dismissed or narrowed by motions *in limine*, at trial, or on a subsequent appeal. The Court could grant
12 Realogy’s motion *in limine* to exclude the PhoneBurner and WAVV call logs, and it could decline to
13 admit the Mojo call logs, which at minimum would greatly increase the complexity and difficulty of
14 prevailing on a classwide basis at trial. The jury could also decline to credit Plaintiffs’ evidence. For
15 example, if the jury does not credit Sarah Bumpus’s testimony that she told Coldwell Banker agents
16 not to call her back before she received the calls at issue, then Ms. Bumpus would not be able to
17 prevail on the NDNC Class’s claims because she would have an established business relationship with
18 Coldwell Banker. The jury could also find for the NDNC Class but award them only a de minimis
19 amount in damages on a per violation basis, *see* 47 U.S.C. § 227(c)(5) (providing for “up to \$500” per
20 call). Even if Plaintiffs prevailed, they would likely face a post-verdict motion to reduce the judgment
21 amount for both the NDNC Class and Prerecorded Message Class based on the Ninth Circuit’s
22 direction in *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109 (9th Cir. 2022). Realogy has also repeatedly
23 requested to decertify the classes, and the Court has held open the possibility that decertification could
24 occur at or after trial. ECF No. 390.

25 143. Plaintiffs’ Counsel are not aware of any court that, at the time this case was filed, had
26 certified a class on a theory of realty brokerage vicarious liability for TCPA-violative calls made by
27 affiliated realtors or found the theory otherwise viable in any legal context. Plaintiffs’ Counsel are at
28 the forefront of this novel theory and are not aware of a single such case being filed in any court

1 before Plaintiffs' Counsel began pursuing it in May 2018, seven years ago. *See, e.g., Wright v. Keller*
2 *Williams Realty, Inc.*, No. 2:18-cv-00635 (W.D. Wash.) (filed May 2, 2018); *Wright v. La Rosa Realty, LLC*,
3 No. 6:18-cv-00734 (M.D. Fla.) (filed May 11, 2018); *Gonzalez v. Related ISG Realty, LLC*, No. 1:18-cv-
4 23238 (S.D. Fla.) (filed Aug. 9, 2018); *Chinitz v. Intero Real Estate Servs.*, No. 5:18-cv-05623 (N.D. Cal.)
5 (filed Sep. 13, 2018); *Chinitz v. NRT W., Inc.*, No. 5:18-cv-06100 (N.D. Cal.) (filed Oct. 4, 2018); *Wright*
6 *v. eXp Realty, LLC*, No. 6:18-cv-01851 (M.D. Fla.) (filed Oct. 30, 2018); *Valdes v. Century 21 Real Estate,*
7 *LLC*, No. 2:19-cv-05411 (D.N.J.) (filed Feb. 11, 2019); *St John v. Keller Williams Realty*, No. 6:19-cv-
8 1347-PGB-DCI (M.D. Fla.) (filed July 22, 2019); *Declements v. My Home Group Real Estate LLC*, No.
9 2:20-cv-00362 (D. Ariz.) (filed Feb. 19, 2020). Since then, courts across the country have repeatedly
10 disagreed about the viability of Plaintiffs' Counsel's vicarious liability theory seeking to hold
11 brokerages liable for the acts of affiliated realtors. *Compare Valdes v. Century 21 Real Est., LLC*, No.
12 2:19-cv-05411, 2019 WL 5388162 (D.N.J. Oct. 22, 2019) (denying brokerage's motion to dismiss);
13 *Hayhurst v. Keller Williams Realty, Inc.*, No. 1:19-cv-00657, 2020 WL 4208046 (M.D.N.C. July 22, 2020)
14 (same); *John v. Keller Williams Realty, Inc.*, No. 6:19-cv-01347-PGB-DCI, 2020 WL 10502631 (M.D. Fla.
15 Feb. 4, 2020) (same), *with Usanovic v. Americana, L.L.C.*, No. 2:23-cv-01289-RFB-EJY, 2025 WL 961657
16 (D. Nev. Mar. 31, 2025) (granting brokerage's motion to dismiss); *Rahimian v. Adriano*, No. 2:20-cv-
17 02189-GMN-VCF, 2022 WL 798371 (D. Nev. Mar. 16, 2022) (same); *Dave v. Century 21 Real Est.,*
18 *LLC*, No. 4:20-cv-00840-JD, 2021 WL 5360944 (D.S.C. Sept. 15, 2021) (same); *Valdes v. Nationwide*
19 *Real Est. Execs., Inc.*, No. 20-cv-01734-DOC-JDE, 2021 WL 2134159 (C.D. Cal. Apr. 22, 2021) (same);
20 *DeClements v. RE/MAX LLC*, No. 1:20-cv-02075-DDD-SKC, 2020 WL 9259326 (D. Colo. Oct. 13,
21 2020) (same); *Declements v. Americana Holdings LLC*, No. 20-cv-00166-PHX-DLR, 2020 WL 4220075
22 (D. Ariz. July 23, 2020) (granting brokerage owner/operator's motion to dismiss). Courts have
23 disagreed about the viability of this theory at every stage of litigation, including the class certification
24 stage. *Compare Chinitz v. NRT W., Inc.*, No. 18-cv-06100-NC, 2019 WL 4142044, at *4-5 (N.D. Cal.
25 Aug. 30, 2019) (rejecting vicarious liability theory and denying class certification), *with Wright v. eXp*
26 *Realty, LLC*, No. 6:18-cv-01851 (M.D. Fla. Sept. 29, 2021), ECF No. 175 (granting class certification).

27 **III. Plaintiffs' Counsel's Lodestar and Expenses**

28 144. To date, and not counting future time and effort on settlement administration and

1 approval, Plaintiffs' Counsel's total current lodestar is \$9,739,959.65 based on 10,243.75 total hours
 2 expended to date at each firm's customary hourly rates. The \$6,000,000 in attorneys' fees that
 3 Plaintiffs' Counsel are seeking thus reflects a negative multiplier of approximately 0.62 on their current
 4 lodestar. This information is summarized below¹¹:

Firm	Hours	Lodestar	Costs
Bailey & Glasser, LLP	996.3	\$749,075	\$19,991
Law Offices of Stefan Coleman	454	\$331,420	\$63,927
Kaufman P.A.	1,280	\$980,460	\$61,079
Reese LLP	2,388	\$3,303,450	\$156,790.96
Tycko & Zavareei LLP	5,125.45	\$4,375,554.65	\$231,561.50
TOTAL (excluding initial class notice cost and Settlement Administrative Expenses – see below)	10,243.75	\$9,739,959.65	\$533,349.46

12 The above time *includes* a limited number of hours spent on the first lawsuit relating to the Realogy
 13 calls at issue here, *Chinitz v. NRT West, Inc.*, recounted more fully above. That litigation provided critical
 14 information that led to this proposed settlement. The following costs were or will be incurred in the
 15 case but are *not included* in the chart above:

- 16 • The cost of the initial notice to class members was \$365,390. The appointed notice administrator who sent that notice, Epiq, has deferred payment of that invoice.
- 17 • Epiq estimates that Settlement Administrative Expenses will be \$315,000. Epiq has agreed to cap Settlement Administrative Expenses at \$340,000.

18
 19 The total costs incurred, excluding Settlement Administrative Expenses, are \$898,739.46 (\$533,349.46
 20 plus \$365,390). Included in these costs is a total of \$294,362.50 paid to expert witnesses.¹²

21 145. My firm is court-appointed class counsel in this litigation. My firm has extensive class
 22 action experience. Reese LLP has been appointed as class counsel in numerous class actions, including,
 23 but not limited to: *Mitchell v. Intero Real Estate*, No. 5:18-cv-05623-BLF (N.D. Cal.); *In re fairlife Milk*
 24 *Products Marketing and Sales Practices Litigation*, MDL No. 2909, Lead Case No. 1:19-cv-03924-RMD-

25
 26 ¹¹ Each firm working on this case excluded hours from timekeepers who worked less than 50 hours
 27 on the case. Each firm also reduced costs as follows: (a) hotel costs were capped at \$350 per night;
 (b) meals were capped at \$40 for dinner, and \$20 for all other meals; (c) copy charges were eliminated;
 (d) flight costs were capped at \$700.

28 ¹² Tycko & Zavareei LLP paid an additional expert invoice of \$5,547.50 after the preliminary approval motion was filed to Class Experts Group for work done by Anya Verkhovskaya.

1 MDW (N.D. Ill.); *Chin v. RCN Corp.*, No. 08-cv-7349 (S.D.N.Y.); *Cicciarella v. Califia Farms, LLC*, No.
2 7:19-cv-08785-CS (S.D.N.Y.); *Ferrera v. Snyder's-Lance, Inc.*, No. 13-cv-62496 (S.D. Fla.); *Frobberg v.*
3 *Cumberland Packaging Corp.*, Case No. 1:14-cv-0748-RLM (E.D.N.Y.); *Holve v. McCormick & Co., Inc.*,
4 Case No. 6:16-cv-FPG-MJP (W.D.N.Y.); *Howerton v. Cargill, Inc.*, Case No. 13-cv-0336 (D. Hawaii);
5 *Huyer v. Wells Fargo Co.*, 295 F.R.D. 332 (S.D. Iowa 2013); *In re General Mills, Inc. Kix Cereal Litig.*, Case
6 No. 2:12-cv-00249-KM-MCA (D.N.J.); *In re Hill's Pet Nutrition, Inc. Dog Food Products Liability Litig.*,
7 No. 19-md-02887-JAR (D. Kansas); *Rosen v. Unilever United States Inc.*, Case No. 09-02563 JW (N.D.
8 Cal.); *Worth v. CVS Pharmacy, Inc.*, No. 16-cv-00498 (E.D.N.Y.); and *Yoo v. Wendy's Corp.*, Case No. 07-
9 4515 (C.D. Cal.) (stating that Reese LLP "has conducted the litigation and achieved the Settlement
10 with skill, perseverance and diligent advocacy"). *See also* Reese LLP Firm Resume, ECF No. 395-4
11 (attached as Exhibit 3 to the Declaration of George V. Granade in Support of Plaintiffs' Motion for
12 Preliminary Approval of Class Action Settlement and for Certification of Settlement Classes).

13 146. Members of my firm have been involved in all aspects of work in this litigation,
14 including the following: development of the action prior to filing; prosecution of this action from its
15 inception; discovery; extensive motion practice; mediation; drafting and finalizing the Settlement
16 Agreement; and the briefing of the motion for preliminary approval. My firm will also be extensively
17 involved in the briefing of the motion for final approval. Reese LLP has vigorously represented the
18 interests of the Settlement Class Members throughout the course of the litigation and settlement
19 process.

20 147. The schedule attached hereto as **Exhibit 1** is a summary, by category, of the amount
21 of time spent by the attorneys of my firm who were involved in this litigation, and the lodestar
22 calculation based on my firm's current billing rates, excluding, however, all timekeepers who worked
23 less than 50 hours on the case. Time expended in preparing this application for fees and
24 reimbursement of expenses has not been included in this request. In sum, the attorneys of Reese LLP
25 spent 2,388 hours on this matter for a lodestar of \$3,303,450.

26 148. Reese LLP has litigated this matter completely on a contingency fee basis for over five
27 years, having not been paid anything to date for their considerable time and efforts.

28 149. I anticipate expending additional time and effort through final approval to respond to

1 inquiries from Settlement Class Members, respond to any potential objectors, prepare final approval
2 papers, review claims, and advocate on behalf of the Settlement Class Members in the event a claim
3 is wrongfully denied. I estimate that approximately no less than 70 hours of work will be required to
4 see this matter to completion, assuming no objections are filed.

5 150. The hourly rates for the partners at Reese LLP are the same as the regular, current
6 rates that have been accepted by courts in other class litigation. Reese LLP has established hourly rates
7 for the firm's personnel and increases those billing rates at the beginning of each calendar year. Reese
8 LLP increased its hourly rates for 2025, which is consistent with prior hourly rate increases. The rates
9 for 2025 are reflected in Exhibit 1 hereto.

10 151. Reese LLP establishes the rates based on prevailing market rates for comparable
11 attorneys and law firms that have attorneys and staff of comparable skill, experience, and
12 qualifications. Reese LLP obtains information concerning market rates of other attorneys that have
13 similar experience doing similar work from information that appears in court filings by other attorneys
14 in fee submissions; decisions on fee awards; MDL submissions by class action attorneys in which
15 Reese LLP is appointed class counsel and in charge of submitting lodestar to presiding courts on a
16 monthly basis; national bar publications and other press on attorney fees; and, through a review of
17 prior orders granting Reese LLP attorneys' fees in class action litigation. The information obtained by
18 Reese LLP demonstrates that its rates are in line with the market rates charged by attorneys of
19 comparable experience, skill, and reputation for similar class action and complex litigation work.

20 152. The hourly rates charged by Reese LLP in this case are the same as the regular, current
21 rates (adjusted for the annual increases) that have been used in the lodestar cross-check accepted by
22 courts in other class litigation. *See, e.g., Lipssett v. Banco Popular North America*, No. 1:22-cv-03901-MMG
23 (S.D.N.Y. Jan. 7, 2025), ECF No. 62 (order granting class counsel's fee request in total based upon
24 2025 calendar year hourly rate for Michael R. Reese of \$1,625 per hour); *McKinley v. Conopco, Inc.*, Index
25 No. 805260/2024E (Bronx County Supreme Court, Nov. 22, 2024) (order granting class counsel's fee
26 request in total based upon 2024 calendar year hourly rate for Michael R. Reese of \$1,600 per hour),
27 *available at* <https://www.vanillaicecreamsettlement.com>; *Counts v. Arkk Food Company*, No. 1:23-cv-
28 00236 (N.D. Ill. Sept. 26, 2024) (granting class counsel's fee request in total based upon 2024 calendar

1 year hourly rate for Michael R. Reese of \$1,600 per hour), *available at*
2 <https://www.picklesttlement.com>; *Vela v. AMC Networks, Inc.*, No. 1:23-cv-02524-ALC (S.D.N.Y.
3 May 16, 2024) (granting class counsel’s fee request in total based upon 2024 calendar year hourly rate
4 for Michael R. Reese of \$1,600 per hour), *available at* <https://www.amcvppasettlement.com>; *Sharpe v.*
5 *A&W Concentrate Co.*, No. 1:19-cv-00768-BMC (Nov. 16, 2023 E.D.N.Y.) (granting class counsel’s
6 motion for payment of fees based upon 2023 calendar rates of \$1,500 per hour for class counsel
7 Michael R. Reese: “Class Counsel have done excellent work in this matter and have achieved a
8 substantial benefit for the Class. Class Counsel are very experienced, both in class actions and in this
9 kind of consumer litigation. Moreover, their hourly rates are commensurate with the highest quality
10 of practice in this District and are hereby approved.”).

11 153. Furthermore, the information obtained by Reese LLP demonstrates that its rates are
12 in line with non-contingent market rates charged by attorneys of comparable experience, skill, and
13 reputation. *See Exhibit 3* hereto, a true and correct copy of a Notice of Professional Fee Hourly Rates
14 filed in *In re: PhaseBio Pharmaceuticals, Inc.*, No. 22-10995-LSS (Bankr. D. Del. Feb. 9, 2024), ECF No.
15 952, showing partners at Cooley LLP charging \$1,450-\$2,290 per hour.

16 154. My firm also has reasonably incurred \$156,790.96 in expenses, as summarized in
17 **Exhibit 2** hereto. The expenses Reese LLP incurred are of a type routinely charged to hourly paying
18 clients and include filing fees, expert costs, mediation costs, travel, lodging, meal costs, court reporting,
19 videography, and courtesy copies. The cost information in Exhibit 2 includes the following reductions:
20 (a) hotel costs were capped at \$350 per night; (b) meals were capped at \$40 for dinner, and \$20 for all
21 other meals; (c) copy charges were eliminated; (d) flight costs were capped at \$700. In addition, as
22 stated above, the cost of the initial notice to class members was \$365,390, and Plaintiffs’ Counsel are
23 responsible to pay this cost to Epiq (although Epiq has deferred the charge); and as stated above, costs
24 of the Settlement also include Settlement Administrative Expenses which Epiq has capped at
25 \$340,000.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 2, 2025, at Santa Monica, California.

By: /s/ George V. Granade
George V. Granade

EXHIBIT 1

REESE LLP LODESTAR

	George V. Granade (Attorney)	Michael R. Reese (Attorney)	Carlos F. Ramirez (Attorney)	Grand Total
Hourly Rate	\$1,250.00	\$1,625.00	\$1,375.00	
Complaint and Pre-Complaint Investigation	26.5	8.1	15.7	
Discovery (Fact and Expert Discovery)	626.2	538.3	39.5	
Motion Practice (Motions to Dismiss)	53.1	0.0	20.5	
Motion Practice (Class Certification and Related)	140.1	21.1	0.0	
Motion Practice (Summary Judgment and Related)	183.6	15.5	0.0	
Motion Practice (Preliminary Approval)	20.2	10.5	0.0	
Motion Practice (All Other)	49.5	18.0	4.0	
Settlement Efforts (Including All Notice and Administration)	26.7	156.8	0.0	
Client Communication	44.3	0.0	0.0	
Trial Preparation	226.8	53.5	0.0	
Miscellaneous (General Administrative Case Work and Attorney Strategy and Discussions)	87.0	0.0	2.5	
TOTAL HOURS	1,484.0	821.8	82.2	2,388
TOTAL FEES	\$1,855,000	\$1,335,425	\$113,025	\$3,303,450

EXHIBIT 2

REESE LLP COSTS AND EXPENSES

Category	Amount
Filing Fees	\$400
Expert Costs	\$104,738.30
Mediation Costs	\$9,770
Travel, Lodging, and Meal Costs ¹	\$7,038.81 ²
Discovery Costs (e.g., Court Reporting, Videographer)	\$27,606.54
Miscellaneous Costs (e.g., Courtesy Copies)	\$7,237.31
TOTAL	\$156,790.96

¹ Hotel costs were capped at \$350 per night. Meals were capped at \$40 for dinner, and \$20 for all other meals. Flight costs were capped at \$700.

² These costs include travel costs related to the hearings on preliminary and final approval, and explain why Reese LLP's total costs here are slightly higher than the \$155,972 stated in the motion for preliminary approval.

EXHIBIT 3

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
)	
PHASEBIO PHARMACEUTICALS, INC., ¹)	Case No. 22-10995 (LSS)
)	
Debtor.)	
)	Re: Docket No. 271

NOTICE OF PROFESSIONAL FEE HOURLY RATES

PLEASE TAKE NOTICE that on December 19, 2022, the Court entered an order authorizing the above captioned debtor and debtor-in-possession (the “**Debtor**”) to retain Cooley LLP (“**Cooley**”) as its lead counsel effective as of October 23, 2022 (the “**Retention Order**”) [Docket No. 271].

PLEASE TAKE FURTHER NOTICE that this Notice is being provided in accordance with paragraph 5 of the Retention Order.

PLEASE TAKE FURTHER NOTICE that as more fully described in Cooley’s retention application, Cooley’s hourly rates are subject to periodic firm-wide adjustment. Effective January 1, 2024, Cooley’s customary hourly rates for attorneys, paralegals, and professional staff who may provide services to the Debtor in this chapter 11 case shall range as follows:

Billing Category	Range
Partners	\$1,450 - \$2,290
Counsel ²	\$1,205 - \$2,375
Associates	\$760 - \$1,395
Paralegals	\$215 - \$670
Professional Staff	\$140 - \$650

¹ The last four digits of the Debtor’s federal tax identification number are 5697. The Debtor’s registered address is 3500 S. DuPont Hwy, Dover, Delaware 19901.

² Includes Senior Counsel, Of Counsel, and Special Counsel timekeepers.

Date: February 9, 2024

COOLEY LLP

/s/ Cullen D. Speckhart

Cullen D. Speckhart, Esq.

Olya Antle, Esq.

COOLEY LLP

1299 Pennsylvania Avenue, NW, Suite 700

Washington, DC 20004

Tel: (202) 842-7800; Fax: (202) 842-7899

Email: cspeckhart@cooley.com

oantle@cooley.com

-and-

Robert L. Eisenbach III, Esq.

COOLEY LLP

3 Embarcadero Center, 20th Floor

San Francisco, California 94111

Tel: (415) 693-2000; Fax: (415) 693-2222

Email: reisenbach@cooley.com

-and-

Philip M. Bowman, Esq.

Jeremiah P. Ledwidge, Esq.

COOLEY LLP

55 Hudson Yards

New York, New York 10001

Tel: (212) 479-6000; Fax: (212) 479-6275

Email: pbowman@cooley.com

jledwidge@cooley.com

Counsel to the Debtor

Sabita J. Soneji (State Bar No. 224262)
ssoneji@tzlegal.com

TYCKO & ZAVAREEI LLP

1970 Broadway, Suite 1070
Oakland, California 94612
Telephone: (510) 254-6808

Hassan A. Zavareei (State Bar No. 181547)
hzavareei@tzlegal.com

Gemma Seidita (State Bar No. 322201)

gseidita@tzlegal.com

TYCKO & ZAVAREEI LLP

2000 Pennsylvania Avenue, NW, Suite 1010
Washington, District of Columbia 20006
Telephone: (202) 973-0900

*Counsel for plaintiffs Sarah Bumpus, Micheline Peker,
and Cheryl Roman and the Classes*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SARAH BUMPUS, MICHELINE PEKER,
and CHERYL ROWAN, *individually, and on
behalf of a class of similarly situated persons,*

Plaintiff,

v.

REALOGY HOLDINGS CORP.; REALOGY
INTERMEDIATE HOLDINGS LLC;
REALOGY GROUP LLC; REALOGY
SERVICES GROUP LLC; and REALOGY
BROKERAGE GROUP LLC (f/k/a NRT
LLC),

Defendants.

Case No. 3:19-cv-03309-JD

**DECLARATION OF SABITA J. SONEJI
IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Judge: Honorable James Donato

Date: August 28, 2025

Time: 10:00 a.m.

Place: Courtroom 11, 19th Floor

1 Pursuant to Civil Local Rule 7-5, I, Sabita J. Soneji, declare as follows:

2 1. I am a partner at the law firm of Tycko & Zavareei, LLP, which is co-counsel for Sarah
3 Bumpus, Micheline Peker, and Cheryl Rowan, and the Classes in the above-captioned action (“Plaintiffs”).
4 The Court previously appointed me as Class Counsel in this matter.

5 2. I submit this declaration in support of my firm’s application for payment of attorneys’ fees
6 and reimbursement of expenses in connection with services rendered in this case. I have personal
7 knowledge of the matters set forth herein based upon my active supervision and participation in all aspects
8 of the litigation since 2019.

9 3. I am a member in good standing of the bars of the State of California and of Washington,
10 DC, and am admitted to practice in the United States District Courts for the Northern District of
11 California, Central District of California, and District of Columbia, as well as the United States Court of
12 Appeals for the Ninth Circuit and the Supreme Court of the United States.

13 4. I have been practicing law for over 23 years. Prior to joining Tycko & Zavareei as a partner,
14 I had extensive civil and criminal litigation experience including working for the United States Department
15 of Justice as Senior Counsel to the Associate Attorney General and an Assistant United States Attorney,
16 serving as Deputy County Counsel for Santa Clara County, and working for a private international law
17 firm. Since founding and chairing Tycko & Zavareei’s Data Privacy and Cybersecurity litigation practice,
18 I have successfully resolved numerous class actions and multidistrict litigations including *In re T-Mobile*
19 *Customer Data Security Breach Litigation* (No. 4:21-MD-03019-BCW, W.D. Mo.), one of the largest data breach
20 cases in history, securing a \$500 million settlement, including a \$350 million cash fund, finalized in June
21 2023. Moreover, in February 2024, as co-lead counsel, I secured final approval of a \$37.5 million settlement
22 against Meta Platforms, Inc., in *Lundy v. Meta Platforms, Inc.* (No. 3:18-cv-6793, N.D. Cal.) for unauthorized
23 location tracking of users. I have also been appointed to help lead MDL and other consolidated actions on
24 behalf of consumers hurt by corporate collection, exploitation, and failure to protect sensitive and private
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1 data.

2 5. I am also experienced in litigating Telephone Consumer Protection Act (“TCPA”) claims,
3 such as those at issue in the instant litigation. *See Chinitz v. Intero Real Estate Servs.*, No. 5:18-cv-05623-BLF
4 (N.D. Cal.) (settlement of approximately \$13,000,000); *Faucett v. Move, Inc.*, No. 22-cv-04948 (C.D. Cal.)
5 (TCPA defendant’s appeal of denial of motion to compel arbitration of putative class action denied at No.
6 24-2631 (9th Cir. Apr. 15, 2025); *Mason v. Spring EQ LLC*, No. 5:24-cv-01833 (C.D. Cal.) (putative class
7 action pending).

8 6. For this work, I have recently been highlighted by Lawdragon in 2025 as one of its “500
9 Leading Plaintiff Consumer Lawyers”, by Law.com in 2024 as a California Legal Awards Distinguished
10 Leader Award Winner, and by the National Law Journal’s Elite Trial Lawyers as a recipient of the 2023
11 Diversity Initiative Award.

12 7. My partner Hassan Zavareei also has extensive experience in litigating consumer class
13 actions, including through trial or settlement. Mr. Zavareei is a founding partner of our firm and is a
14 member in good standing of the California, District of Columbia, and Maryland bars, as well as numerous
15 federal district courts and federal courts of appeals, and the Supreme Court of the United States, where he
16 has presented oral argument. *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). Mr. Zavareei has recovered
17 hundreds of millions of dollars for consumers in class actions during his 30 years of practicing law. Mr.
18 Zavareei is experienced in TCPA matters and has presented testimony to the House Judiciary Committee
19 regarding the TCPA. For these achievements and others, including his numerous leadership appointments
20 in MDLs or other consolidated actions, Mr. Zavareei was named a 2021 Class Action MVP by Law 360
21 (an award given to only five attorneys in the United States each year for extraordinary wins in class action
22 cases), and named a “Titan of the Plaintiffs’ Bar” in 2022 by Law 360.

23 8. Further, my law firm Tycko & Zavareei has extensive class action litigation experience and
24 has been appointed as class counsel in numerous class actions, including, but not limited to: *Chinitz v. Intero*
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1 *Real Estate Servs.*, No. 5:18-cv-05623-BLF (N.D. Cal.); *Lundy v. Meta Platforms Inc.*, No. 3:18-cv-06793-JD
 2 (N.D. Cal.); *Vergara v. Uber Techs., Inc.*, No. 1:15-cv-06942 (N.D. Ill.); *In re: Luxottica of America Inc. Data*
 3 *Security Breach Litig.*, Case No. 1:20-cv-00908 (S.D. Ohio); *Trauernicht v. Genworth Financial Inc.*, Case No. 3:22-
 4 cv-532 (E.D. Va.); *McFadden v. Nationstar Mortgage, LLC*, Case No. 1:20-cv-00166 (D.D.C); *Tabak v. Apple,*
 5 *Inc.*, Case No. 4:19-cv-02455 (N.D. Cal.); *Lembeck v. Arvest Central Mortgage Co.*, Case No. 3:20-cv-03277
 6 (N.D. Cal.); *Negron v. Ascension Health*, Case No. 4:24-CV-669 (E.D. Mo.); *Cabezas v. Mr. Cooper Group, Inc.*,
 7 Case No. 3:23-CV-2453 (E.D. Tex.); *In Re: HealthEC Data Breach Litig.*, Case No. 2:24-cv-00026 (D.N.J.);
 8 *In re: Fortra File Transfer Software Data Security Breach Litig.*, Case No. 1:24-md-03090 (S.D. Fla.); *In re: Harvard*
 9 *Pilgrim Data Security Incident Litig.*, Case No. 1:23-cv-11211 (D. Mass.); *In re: T-Mobile Customer Data Security*
 10 *Breach Litig.*, Case No. 4:21-md-03019 (W.D. Mo.); *In re: Capital One Consumer Data Security Breach Litig.*, Case
 11 No. 1:19-md-2915 (E.D. Va.); *In re: Juul Labs Inc., Marketing, Sales Practices, and Prods. Liab. Litig.*, Case No.
 12 19-md-02913 (N.D. Cal.); *Silvers et al v. HCA Healthcare, Inc.*, Case No. 3:23-cv-00684 (M.D. Tenn.); *In re:*
 13 *LastPass Data Security Incident Litig.*, Case No. 1:22-cv-12047 (D. Mass.); *In re: Samsung Customer Data Security*
 14 *Breach Litig.*, Case No. 23-md-3055 (D.N.J).

15
 16 9. Tycko & Zavareei has been awarded fees based on the Adjusted Laffey Matrix,
 17 (<http://www.laffeymatrix.com/>), which provides the market rates for attorneys working in the
 18 Washington, D.C., area. *See, e.g., DL v. Dist. of Columbia*, 924 F.3d 585 (D.C. Cir. 2019) (discussing the
 19 history and basis of the Laffey matrix). These fee awards include awards for our then-current hourly rates
 20 and corresponding lodestar in actions involving Telephone Consumer Protection Act (“TCPA”) claims,
 21 like those involved in the current lawsuit. *See Chinitz v. Intero Real Estate Servs.*, No. 5:18-cv-05623-BLF
 22 (N.D. Cal.); *Vergara v. Uber Techs., Inc.*, No. 1:15-cv-06942 (N.D. Ill.). Such fee awards supported by our
 23 firms’ then-current hourly rates and corresponding lodestar are routinely approved as reasonable in class
 24 litigation across the country involving other consumer claims. *See, e.g., Lundy v. Meta Platforms Inc.*, No. 3:18-
 25 cv-06793-JD (N.D. Cal.); *In re Juul Labs, Inc. Marketing Sales Practs. & Prods. Liab. Litig.*, No. 3:19-md-02913-
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1 WHO (N.D. Cal.); *In re GEICO Gen. Ins. Co.*, No. 19-CV-03768-HSG (N.D. Cal.); *Kumar v. Salov N. Am.*
2 *Corp.*, No. 14-CV-2411-YGR, (N.D. Cal.); *Stabakos v. Columbia Sportswear Co.*, No. 15-YGR, (N.D. Cal.);
3 *McFadden v. Nationstar Mortg. LLC*, No. 1:20-cv-00166-ZMF (D.D.C.); *Baker v. City of Florissant*, No. 4:16-
4 cv-01693-RHH (E.D. Mo.); *Moler v. University of Maryland Medical System*, No. 1:21-cv-01824-JRR (D. Md.);
5 *In re Ring LLC Privacy Litig.*, No. 2:19-10899-MWF-RAO (C.D. Cal.); *Nixon v. Grande Cosmetics, LLC*, 1:22-
6 cv-06639-RMB-MJS (D.N.J.), *Harrold v. MUFG Union Bank, N.A.*, No. BC680214 (Cal. Super Ct.); *Nguyen*
7 *v. Educations Computer Sys.*, No. 2:22-cv-01743-PLD (W.D. Penn.); *Tabak v. Apple, Inc.*, 4:19-cv-02455-JST
8 (N.D. Cal.); *Klopfenstein v. Fifth Third Bank*, No. 1:12-cv-851-MRB, 2025 WL 755153 (S.D. Ohio).

9
10 10. Tycko & Zavareei attorneys and paralegals began working on this case in the precursor to
11 the instant litigations' filing on October 4, 2018, and have been involved in all aspects of work in this
12 litigation since then. This work includes development of the action prior to filing, prosecution of the action
13 from its inception, fact and expert discovery and extensive accompanying motion practice; class
14 certification, *Daubert* motions, summary judgment, mediation, multiple rounds of trial preparation, several
15 rounds of settlement negotiations, and drafting and finalizing of various aspects of the motion for
16 preliminary approval. My firm will also be involved in the briefing and preparations for the motion for final
17 approval. Prior to the filing of this instant motion, Tycko & Zavareei attorneys and paralegals have incurred
18 \$4,375,554.65 in unbilled fees for 5,152.45 hours of work dedicated to this case. Consistent with this
19 Court's Standing Order, a chart reflecting the hourly rates of each of the Tycko & Zavareei attorneys and
20 paralegals who billed time to this matter, as well as a breakdown of their time spent by category, is included
21 as **Exhibit 1** to this declaration. The hourly rates reflected in **Exhibit 1** for the attorneys and paralegals at
22 Tycko & Zavareei are our firms' 2024 rates delineated by the Adjusted Laffey Matrix.

23
24 11. Tycko & Zavareei also incurred \$231,561.50 in unreimbursed litigation costs and expenses
25 sorted by category, as set forth in the table included as **Exhibit 2** to this declaration.

26
27 12. Exhibits 1 and 2 are supported by the contemporaneous time and expense record kept by
28

1 Tycko & Zavareei attorneys and paralegals. I have reviewed these entries and believe the hours expended
2 and costs incurred were reasonable and necessary to securing the result in this case. The contemporaneous
3 detailed daily time records are regularly prepared and maintained by Tycko & Zavareei utilizing timekeeping
4 software to which all employees have access. In my opinion, the time spent by attorneys and staff of Tycko
5 & Zavareei was reasonable and necessary. Indeed, by prosecuting this case purely on a contingency basis
6 and not being paid by the hour, Tycko & Zavareei attorneys and staff worked efficiently and avoided
7 unnecessary work. Work on this case by Tycko & Zavareei team members has necessarily been to the
8 exclusion of work on other matters that likely would have generated fees. Further, the hours and expenses
9 set forth are also the type that would normally be billed to clients in non-contingency matters, and therefore
10 should be approved.
11

12 13. The total number of hours identified in **Exhibit 1** is based only on the hours reasonably
13 expended to achieve an excellent result for the Classes. Our firm coordinated our efforts in the litigation
14 of this case with our co-counsel to ensure that there was no duplicative or unnecessary work. Because our
15 firm is experienced in litigating complex class actions, including TCPA class actions, we were able to
16 efficiently divide tasks based on expertise.
17

18 14. I anticipate that Class Counsel will devote substantial additional time to this case through
19 its completion. Based on my experience, I estimate that the additional work in this matter will likely incur
20 at least \$100,000 in additional lodestar, and more if there are objections. The work remaining, which is not
21 reflected in the current lodestar, includes: (1) preparation and filing of this Motion for Award of Attorneys'
22 Fees and Costs and Service Awards; (2) ongoing monitoring of Notice and Claims administration; (3)
23 evaluating and responding to any objections, if received; (4) responding to inquiries from Settlement Class
24 Members; (5) preparing the motion for final approval and supporting documents, including working with
25 the notice administrator on necessary documentation; (6) preparing for and attending the final approval
26 hearing; (6) overseeing the distribution of settlement funds to class members; and (7) other routine case
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1 management and settlement administration matters, including post-distribution filing.

2 I declare under penalty of perjury under the laws of the United States and the State of California
3 that the foregoing is true and correct and that this declaration was executed on May 2, 2025 in Oakland,
4 California.

5 /s/ Sabita J. Soneji

6 Sabita J. Soneji

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EXHIBIT 1

Tycko & Zavareei Attorneys

	Allison Parr	Gemma Seidita	Glenn Chappell	Hassan Zavareei	Kristen Simplicio	Leora Friedman	Mark Clifford	Sabita Soneji	Tanya Koshy	V Prentice
Hourly Rate	\$581.00	\$581.00	\$581.00	\$1,141.00	\$948.00	\$581.00	\$839.00	\$1,141.00	\$948.00	\$839.00
Complaint and Pre-Complaint Investigation	1.00		1.90	6.10	23.10		2.60	52.20	2.20	56.20
Discovery (Fact and Expert Discovery)	105.60	6.40	86.00	66.90	138.20	0.20	172.40	441.10	83.30	208.60
Motion Practice (Motions to Dismiss)	4.20			39.70	18.90		3.90	61.10	18.80	45.80
Motion Practice (Class Certification and Related)	25.40	61.20	161.00	17.00		3.70		238.10	7.00	79.10
Motion Practice (Summary Judgment and Related)			188.70	7.90		16.00		43.00		
Motion Practice (Preliminary Approval)		20.10		14.60				29.60		
Motion Practice (All Other)	13.10	17.60	32.50	12.00	17.60	123.60	15.80	140.40	7.70	
Settlement Efforts (Including all Notice and Administration)		13.60	38.70	36.80	3.00		0.30	99.60	0.30	1.60
Client Communication	1.20	3.30			15.30			2.70	0.10	0.50

Trial Preparation		486.45	280.20	179.10				459.20		
Miscellaneous (General Administrative Case Work and Attorney Strategy and Discussions)	16.30	22.60	25.90	10.20	46.00	3.10	10.10	111.20	25.30	65.50
TOTAL HOURS	166.80	631.25	814.90	390.30	244.50	146.60	205.10	1,678.20	144.70	457.30
TOTAL FEES	\$96,910.80	\$366,756.25	\$473,456.90	\$445,332.30	\$231,786.00	\$85,174.60	\$172,078.90	\$1,914,826.20	\$135,175.60	\$383,674.70

Tycko & Zavareei Paralegals

	Collin Hoover	Connor Rowe			
Hourly Rate	\$258.00	\$258.00			
Complaint and Pre-Complaint Investigation	3.50				
Discovery (Fact and Expert Discovery)	60.20	4.00			
Motion Practice (Motions to Dismiss)	1.60				
Motion Practice (Class Certification and Related)		35.00			
Motion Practice (Summary Judgment and Related)	1.50	22.10			
Motion Practice (Preliminary Approval)		0.20			
Motion Practice (All Other)	2.90	11.50			
Settlement Efforts (Including all Notice and Administration)		1.90			
Client Communication	0.50	0.50			
Trial Preparation		18.30			
Miscellaneous (General Administrative Case Work and Attorney Strategy and Discussions)	76.30	32.80			
TOTAL HOURS	146.50	126.30			
TOTAL FEES	\$37,797.00	\$32,585.40			

EXHIBIT 2

Tycko & Zavareei Litigation Costs and Expenses

Category	Amount
Filing Fees / Process Server Fees	\$7,736.74
Expert Costs	\$115,903.02
Mediation Costs	\$20,206.17
Travel, Lodging, and Meal Costs	\$18,303.64
Photocopies, Postage, and Conference Calls	\$3,612.91
Legal Research	\$7,711.54
Discovery Costs (e.g., Court Reporting, Videographer, DRE Records Research)	\$40,734.16
Class Notice Costs (First Class Notice)	
Miscellaneous Costs (e.g., PACER, Courtesy Copies, Delivery Fees)	\$17,353.32
TOTAL	\$231,561.50

1 George V. Granade (State Bar No. 316050)
ggranade@reesellp.com

2 **REESE LLP**
8484 Wilshire Boulevard, Suite 515
3 Los Angeles, California 90211
Telephone: (310) 393-0070

4 Michael R. Reese (State Bar No. 206773)
mreese@reesellp.com

5 **REESE LLP**
6 100 West 93rd Street, 16th Floor
New York, New York 10025
7 Telephone: (212) 643-0500

8 Sabita J. Soneji (State Bar No. 224262)
ssoneji@tzlegal.com

9 **TYCKO & ZAVAREEI LLP**
1970 Broadway, Suite 1070
10 Oakland, California 94612
Telephone: (510) 254-6808

11 Hassan A. Zavareei (State Bar No. 181547)
hzavareei@tzlegal.com

12 Gemma Seidita (State Bar No. 322201)
gseidita@tzlegal.com
13 **TYCKO & ZAVAREEI LLP**
14 2000 Pennsylvania Avenue, NW, Suite 1010
Washington, District of Columbia 20006
15 Telephone: (202) 973-0900

16 *Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,*
and Cheryl Rowan and the Classes

Brian A. Glasser (*pro hac vice*)
bglasser@baileyglasser.com

John W. Barrett (*pro hac vice*)
jbarrett@baileyglasser.com
BAILEY & GLASSER LLP

209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555

Rachel E. Kaufman (State Bar No. 259353)
rachel@kaufmanpa.com

Avi Kaufman (*pro hac vice*)
avi@kaufmanpa.com

KAUFMAN P.A.
237 South Dixie Highway, Floor 4
Coral Gables, Florida 33133
Telephone: (305) 469-5881

Stefan Coleman (*pro hac vice*)
lan@stefancoleman.com

LAW OFFICES OF STEFAN COLEMAN
66 West Flagler Street, Unit 900
Miami, Florida 33130
Telephone: (877) 333-9427

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

21 SARAH BUMPUS, MICHELINE PEKER,
22 *and* CHERYL ROWAN, *individually, and on*
behalf of a class of similarly situated persons,

23 Plaintiffs,

24 v.

25 REALOGY HOLDINGS CORP.;
26 REALOGY INTERMEDIATE HOLDINGS
27 LLC; REALOGY GROUP LLC; REALOGY
SERVICES GROUP LLC; *and* REALOGY
BROKERAGE GROUP LLC (f/k/a NRT
LLC),

28 Defendants.

Case No. 3:19-cv-03309-JD

**DECLARATION OF AVI KAUFMAN IN
SUPPORT OF MOTION FOR
ATTORNEYS FEES AND COSTS**

Judge: Honorable James Donato

1 I, Avi R. Kaufman, declare as follows:

2 1. I am one of the attorneys for Plaintiffs and the Class under the Settlement
3 Agreement (“Settlement” or “Agreement”) entered into with Defendant. I submit this declaration
4 in support of Plaintiffs’ Motion for Class Counsel Fees and Costs. Except as otherwise noted, I
5 have personal knowledge of the facts set forth in this declaration and could testify competently to
6 them if called upon to do so.

8 2. In this action, my firm dedicated substantial resources to the action’s prosecution,
9 and we intend to continue doing so through the duration of the action.

10 3. My firm is particularly experienced in the litigation, certification, and settlement of
11 nationwide TCPA class action cases.

12 4. Since 2008, the attorneys of Kaufman P.A. have worked on consumer class action
13 cases. To date, not including this Settlement, Class Counsel have achieved class-wide TCPA
14 settlements totaling more than \$100 million. Kaufman P.A.’s attorneys have also successfully
15 recovered millions of dollars in settlements and judgments for plaintiffs in breach of contract
16 actions in the media, real estate, fashion, healthcare, telecommunications, and banking industries.

17 5. I have a degree in government from Harvard University and a JD from Georgetown
18 University Law Center, and have been practicing law for over ten years. For more than five years
19 after graduation, I was a litigation associate at the law firm of Carlton Fields in its national class
20 action and commercial litigation practice groups. During that time, I represented plaintiffs and
21 defendants in various types of individual and class litigation, including securities and TCPA class
22 actions. In 2016, I joined the law firm of Kopelowitz Ostrow Ferguson Weiselberg Gilbert as a
23 partner to work exclusively on consumer class actions. From 2016 until January 2018, when I
24 departed KOFWG to start my own law firm, I represented plaintiffs in class actions arising from
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1 products defects, false advertising, and TCPA violations, including as lead counsel in a TCPA class
2 action against CITGO Petroleum Corp. that settled for \$8.3 million in 2017.

3 6. I am a member of the Florida bar, and am admitted to practice in all federal district
4 courts in Florida and in the Eleventh Circuit. I am also admitted to practice in the Third Circuit,
5 Eastern District of Wisconsin, Eastern District of Michigan, Northern District of Illinois, District
6 of Colorado, Western District of Arkansas, Central District of Illinois, Western District of
7 Michigan, District of Nebraska, and the Third Circuit.

9 7. Kaufman P.A partner Rachel E. Kaufman, Esq. has degrees in communications and
10 philosophy from Northwestern University and a JD from Boston University School of Law. Prior
11 to joining Kaufman P.A., Rachel worked at Lash & Goldberg in its commercial litigation practice
12 and Epstein, Becker & Green in its class action, commercial litigation, and healthcare practices.
13 Rachel is a member of the California, Florida, and Washington, D.C. bars. Rachel is also admitted
14 to practice in all federal district courts in California, the Southern and Middle Districts of Florida,
15 the Eleventh Circuit and the Ninth Circuit.

17 8. Since starting Kaufman P.A., I have focused almost exclusively on TCPA class
18 actions, litigating in various jurisdictions across the country. Among other cases, our firm has been
19 appointed class counsel in the following TCPA cases:
20

- 21 ○ *Broward Psychology, P.A. v. SingleCare Services, LLC* (Fla. Cir. Ct. 2019), a Florida
22 Telephone Consumer Protection Act class action resulting in a \$925,110 class wide
23 settlement.
- 24 ○ *Van Elzen v. Educator Group Plans, et. al.* (E.D. Wis. 2019), a nationwide Telephone
25 Consumer Protection Act class action resulting in a \$900,000 class wide settlement.
- 26 ○ *Halperin v. YouFit Health Clubs, LLC* (S.D. Fla. 2019), a nationwide Telephone
27 Consumer Protection Act class action resulting in a \$1.4 million class wide
28 settlement.

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- *Armstrong v. Codefied Inc.* (E.D. Cal. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$2.2 million class wide settlement.
- *Itayim v. CYS Group, Inc.* (S.D. Fla. 2020), a Florida Telephone Consumer Protection Act class action resulting in a \$492,250 class wide settlement.
- *Bulette v. Western Dental, et al.* (N.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action resulting in a \$9.7 million class wide settlement.
- *Donde v. Freedom Franchise Systems, LLC, et al.* (S.D. Fla. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$948,475.50 class wide settlement.
- *Izor v. Abacus Data Systems, Inc.* (N.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.95 million class wide settlement.
- *Fitzhenry v. Independent Home Products, LLC* (D.S.C. 2020), a nationwide Telephone Consumer Protection Act class action making \$5.16 million available to the settlement class.
- *Judson v. Goldco Direct LLC* (C.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.5 million class wide settlement.
- *Hicks v. Houston Baptist University* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$375,000 class wide settlement.
- *Lalli v. First Team Real Estate* (C.D. Cal. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$478,500 class wide settlement.
- *Fitzhenry, et al. v. Safe Streets USA LLC, et al.* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.5 million class wide settlement.
- *Beiswinger v. West Shore Home LLC* (M.D. Fla. 2022), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1,347,500 class wide settlement.
- *Wright, et al. v. eXp Realty, LLC* (M.D. Fla. 2022), appointed class counsel in a contested nationwide Telephone Consumer Protection Act class action, ultimately resulting in a \$26.91 million class wide settlement.
- *Kenneth A. Thomas MD, LLC v. Best Doctors, Inc.* (D. Mass. 2022), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$738,375 class wide settlement.

- 1 ○ *Miller v. Bath Saver, Inc., et al.* (M.D. Penn. 2022), a nationwide Telephone Consumer
2 Protection Act class action settlement resulting in a \$1,950,000 class wide
3 settlement.
- 4 ○ *DeShay v. Keller Williams Realty, Inc.* (Fla. Cir. Ct. 2023), a nationwide Telephone
5 Consumer Protection Act class action resulting in a \$40 million class wide
6 settlement.
- 7 ○ *Taylor v. Cardinal Financial Company, LP* (M.D. Fla. 2023), a nationwide Telephone
8 Consumer Protection Act class action settlement resulting in a \$7,200,000 class wide
9 settlement.
- 10 ○ *Lomas et al. v. Health Insurance Associates LLC* (M.D. Fla. 2023), a nationwide
11 Telephone Consumer Protection Act class action settlement resulting in a \$990,000
12 class wide settlement.
- 13 ○ *Chapman et al. v. America's Lift Chairs, LLC* (S.D. Ga. 2023), a nationwide Telephone
14 Consumer Protection Act class action settlement resulting in a \$1,700,000 class wide
15 settlement.
- 16 ○ *Dumas v. Paradise Exteriors, LLC* (Fla. Cir. Ct. 2024), a nationwide Telephone
17 Consumer Protection Act class action settlement resulting in a \$1,400,000 class wide
18 settlement.
- 19 ○ *Stark v. Blue Cross Blue Shield of North Carolina, et al.* (M.D.N.C. 2025), a nationwide
20 Telephone Consumer Protection Act class action settlement resulting in a
21 \$1,670,000 class wide settlement.
- 22 ○ *Marden's Ark Corp. v. UnitedHealth Group Inc.* (E.D.N.C. 2025), a nationwide
23 Telephone Consumer Protection Act class action settlement resulting in a
24 \$1,846,500 class wide settlement. (Pending final approval hearing in August 2025).

25 9. Kaufman P.A. has been awarded attorneys' fees as a percentage of the fund in TCPA
26 class actions based on lodestar cross-checks using Mr. Kaufman's hourly rate of \$800 and Ms.
27 Kaufman's hourly rate of \$730. *See Izor v. Abacus Data Sys.*, No. 19-cv-01057-HSG, 2020 U.S. Dist.
28 LEXIS 239999, at *26-27 (N.D. Cal. Dec. 21, 2020); *Bulette v. Western Dental Services Inc.*, No. 3:19-cv-
00612-MMC, ECF 82 (N.D. Cal. Jul. 17, 2020); *Stark v. Blue Cross and Blue Shield of North Carolina, et*
al., Case No. 1:23-cv-22, ECF 80 (M.D.N.C. Feb. 18, 2025); *Lomas v. Health Ins. Assocs. LLC*, No.
6:22-CV-00679-PGB-DCI, 2023 U.S. Dist. LEXIS 148415, at *5 (M.D. Fla. June 23, 2023); *Beiswinger*
v. West Shore Home LLC, Case No. 3:20-cv-01286-HES-PDB, ECF 36 (M.D. Fla. May 26, 2022);
Wright, et al. v. eXp Realty, LLC, Case No. 6:18-cv-01851-PGB-EJK, ECF 230 (M.D. Fla. Oct. 26,

1 2022); *Judson v. Goldco Direct, LLC*, Case No. 2:19-cv-06798-PSG-PLA, ECF 59 (C.D. Cal. Jun. 11,
2 2021).

3
4 10. In total to date, Kaufman P.A. has devoted 1,280 hours to this litigation. A chart
5 summarizing the nature of the work my firm performed and time expended in this action is attached
6 hereto as Exhibit 1 to demonstrate why Class Counsel's request for attorneys' fees and expenses is
7 reasonable and should be approved by the Court. My firm represented Plaintiffs and the Class on a
8 purely contingent basis. Counsel assumed the significant risk that they would not be compensated
9 for time and out of pocket expenses invested into this contentious case. This risk of nonpayment
10 incentivized counsel to work efficiently, to prevent duplication of effort, and to advance expenses
11 responsibly.

12 11. The time and resources devoted to this action readily justify the requested fee.
13 Moreover, my firm assumed significant risk of nonpayment in initiating and expending attorney
14 hours in this case given the complex legal issues involved and Defendants' vigorous defense of
15 Plaintiffs' and the Class's claims. Despite counsel's effort in litigating, we remain completely
16 uncompensated for the time invested in the action, in addition to the expenses we advanced.
17 Moreover, work on this case has necessarily been to the exclusion of work on other matters that
18 likely would have generated fees.

19 12. The costs incurred by my firm for which reimbursement is sought total \$61,079,
20 which were reasonable and necessary to the effective litigation of this case and are the types of
21 expenses that would typically be billed to clients in non-contingency matters, and therefore should
22 be approved. My firm incurred these costs at the risk of receiving nothing in return. A chart listing
23 the costs by category is attached hereto as Exhibit 2.

24 13. The expenses incurred in this action are reflected in my firm books and records. These
25 books and records are prepared from receipts, check records, credit card statements, and other source
26 materials, and are accurate records of the expenses incurred.

1 I declare under penalty of perjury of the laws of the United States that the foregoing is true
2 and correct.

3 Dated May 2, 2025

4 By: /s/ Avi R. Kaufman
5 Avi Kaufman (*pro hac vice*)
6 *avi@kaufmanpa.com*
7 Rachel E. Kaufman (State Bar No. 259353)
8 *rachel@kaufmanpa.com*
9 **KAUFMAN P.A.**
10 237 South Dixie Highway, Floor 4
11 Coral Gables, Florida 33133
12 Telephone: (305) 469-5881
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*Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,
and Cheryl Rowan and the Classes*

EXHIBIT 1

Kaufman P.A. Attorneys

	Avi R. Kaufman	Rachel E. Kaufman
Hourly Rate	\$800	\$730
Complaint and Pre-Complaint Investigation	6	2
Discovery (Fact and Expert Discovery)	254	259
Motion Practice (Motions to Dismiss)	5	2
Motion Practice (Class Certification and Related)	76	48
Motion Practice (Summary Judgment and Related)	43	26
Motion Practice (Preliminary Approval)	5	4
Motion Practice (All Other)	29	33
Settlement Efforts (Including All Notice and Administration)	89	37
Client Communication	14	68
Trial Preparation	96	103
Miscellaneous (General Administrative Case Work and Attorney Strategy and Discussions)	41	40
TOTAL HOURS	658	622
TOTAL FEES	\$526,400	\$454,060

EXHIBIT 2

Kaufman P.A. Litigation Costs and Expenses

Category	Amount
Filing Fees / Process Server Fees	\$1,226.76
Expert Costs	\$47,631.47
Travel, Lodging, and Meal Costs	\$3,314.11
Discovery Costs (e.g., Court Reporting, Videographer, DRE Records Research)	\$2,061.85
Trial Preparation	\$6,708.75
Miscellaneous Costs (e.g., PACER, Courtesy Copies, Delivery Fees)	\$136.12
TOTAL	\$61,079.06

1 George V. Granade (State Bar No. 316050)
ggranade@reesellp.com

2 **REESE LLP**
8484 Wilshire Boulevard, Suite 515
3 Los Angeles, California 90211
Telephone: (310) 393-0070

4 Michael R. Reese (State Bar No. 206773)
mreese@reesellp.com

5 **REESE LLP**
6 100 West 93rd Street, 16th Floor
New York, New York 10025
7 Telephone: (212) 643-0500

8 Sabita J. Soneji (State Bar No. 224262)
ssoneji@tzlegal.com

9 **TYCKO & ZAVAREEI LLP**
1970 Broadway, Suite 1070
10 Oakland, California 94612
Telephone: (510) 254-6808

11 Hassan A. Zavareei (State Bar No. 181547)
hzavareei@tzlegal.com

12 Gemma Seidita (State Bar No. 322201)
gseidita@tzlegal.com
13 **TYCKO & ZAVAREEI LLP**
14 2000 Pennsylvania Avenue, NW, Suite 1010
Washington, District of Columbia 20006
15 Telephone: (202) 973-0900

16 Brian A. Glasser (*pro hac vice*)
bglasser@baileyglasser.com

17 John W. Barrett (*pro hac vice*)
jbarrett@baileyglasser.com

18 **BAILEY & GLASSER LLP**
209 Capitol Street
19 Charleston, West Virginia 25301
Telephone: (304) 345-6555

20 Rachel E. Kaufman (State Bar No. 259353)
rachel@kaufmanpa.com

21 Avi Kaufman (*pro hac vice*)
avi@kaufmanpa.com

22 **KAUFMAN P.A.**
23 237 South Dixie Highway, Floor 4
Coral Gables, Florida 33133
24 Telephone: (305) 469-5881

25 Stefan Coleman (*pro hac vice*)
lan@stefancoleman.com

26 **LAW OFFICES OF STEFAN COLEMAN**
66 West Flagler Street, Unit 900
27 Miami, Florida 33130
Telephone: (877) 333-9427

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*Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,
and Cheryl Rowan and the Classes*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SARAH BUMPUS, MICHELINE PEKER,
and CHERYL ROWAN, *individually, and on
behalf of a class of similarly situated persons,*

Plaintiffs,

v.

REALOGY HOLDINGS CORP.;
REALOGY INTERMEDIATE HOLDINGS
LLC; REALOGY GROUP LLC; REALOGY
SERVICES GROUP LLC; *and* REALOGY
BROKERAGE GROUP LLC (f/k/a NRT
LLC),

Defendants.

Case No. 3:19-cv-03309-JD

**DECLARATION OF STEFAN
COLEMAN IN SUPPORT OF MOTION
FOR ATTORNEYS FEES AND COSTS**

Judge: Honorable James Donato

Stefan Coleman declares as follows:

1. I am one of the attorneys for Plaintiffs and the Class under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendant. I submit this declaration in support of Plaintiffs’ Motion for Class Counsel Fees and Costs. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. In this Action, my firm dedicated substantial resources to the action’s prosecution, and we intend to continue doing so through the duration of the action.

3. I am particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases.

4. I am a graduate of the University of Virginia and the University of Miami School of Law. I have practiced law for over 18 years in which time I have participated in a number of

1 significant class actions on behalf of consumers. The following is a brief list of some of the class
2 actions in which I have participated:

- 3
- 4 • *Pimental v. Google Inc.*, a Telephone Consumer Protection Act case that resulted in a \$6
5 million settlement for consumers who received a text message from Google’s Slide app.
- 6 • *Woodman v. ADP Dealer Services, Inc., et al.*, a Telephone Consumer Protection Act case
7 that resulted in a \$7.5 million settlement for consumers who received unsolicited text
8 messages promoting car sales.
- 9 • *Lanza v. Palm Beach Holdings., et al.*, a Telephone Consumer Protection Act case that
10 resulted in a \$6.5 million settlement for consumers who received unsolicited text
11 messages.
- 12 • *Kolinek v Walgreen, Co.* a Telephone Consumer Protection Act case that resulted in an \$11
13 million settlement for consumers who received unsolicited calls to their cell phone.
- 14 • *Hopwood v. Nuance Communications., et al.*, a Telephone Consumer Protection Act case that
15 resulted in a \$9.24 million settlement for consumers who received unsolicited calls.
- 16 • *Kran v. Hearst* a Telephone Consumer Protection Act case that resulted in a \$2.1 million
17 settlement for consumers who received unsolicited calls.
- 18 • *Schlossberg v. Gannett Co., Inc.* a Telephone Consumer Protection Act case that resulted in a
19 \$13.4 million settlement for consumers who received unsolicited calls.
- 20 • *Newby v. Rita’s Water Ice Franchise.,* a Telephone Consumer Protection Act case that
21 resulted in a \$3 million settlement for consumers who received unsolicited text messages.
- 22 • *Flanigan v. The Warranty Group, Inc. and American Protection Plans LLC d/b/a American*
23 *Residential Warranty.,* a Telephone Consumer Protection Act case that resulted in a \$16
24 million settlement for consumers who received unsolicited calls.
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- 1 • *Martin v. Global Marketing Research Services*, a Telephone Consumer Protection Act case
2 that resulted in a \$10 million fund for consumers who received unsolicited calls.
- 3 • *Stone & Co. v. LKQ Corporation*, a Telephone Consumer Protection Act case that resulted
4 in a \$3.26 million fund for consumers who received a fax from the defendant.
- 5 • *Dobkin v. NRG*, a Telephone Consumer Protection Act case that resulted in a \$7 million
6 fund for consumers who received an unwanted calls from the defendant.
- 7 • *Gergetz v. Telenav*, a Telephone Consumer Protection Act case that resulted in a \$3.5
8 million fund for consumers who received a text message from the Defendant.
- 9 • *Bowman v. Art Van Furniture*, a Telephone Consumer Protection Act case that resulted in
10 a \$5.87 million fund for consumers who received unwanted phone calls from the
11 Defendant.
- 12 • *Wright, et al. v. eXp Realty, LLC*, appointed class counsel in a contested nationwide
13 Telephone Consumer Protection Act class action, ultimately resulting in a \$26.91 million
14 class wide settlement.
- 15 • *DeShay v. Keller Williams Realty, Inc.* (Fla. Cir. Ct. 2023), a nationwide Telephone
16 Consumer Protection Act class action resulting in a \$40 million class wide settlement.

17 5. I have been awarded attorneys' fees as a percentage of the fund in TCPA class
18 actions based on lodestar cross-checks using the hourly rate of \$730. *See Izor v. Abacus Data Sys.*, No.
19 19-cv-01057-HSG, 2020 U.S. Dist. LEXIS 239999, at *26-27 (N.D. Cal. Dec. 21, 2020); *Bulette v.*
20 *Western Dental Services Inc.*, No. 3:19-cv-00612-MMC, ECF 82 (N.D. Cal. Jul. 17, 2020); *Stark v. Blue*
21 *Cross and Blue Shield of North Carolina, et al.*, Case No. 1:23-cv-22, ECF 80 (M.D.N.C. Feb. 18, 2025);
22 *Beiswinger v. West Shore Home LLC*, Case No. 3:20-cv-01286-HES-PDB, ECF 36 (M.D. Fla. May 26,
23 2022); *Wright, et al. v. eXp Realty, LLC*, Case No. 6:18-cv-01851-PGB-EJK, ECF 230 (M.D. Fla. Oct.
24 26, 2022); *Judson v. Goldco Direct, LLC*, Case No. 2:19-cv-06798-PSG-PLA, ECF 59 (C.D. Cal. Jun.
25 11, 2021).

1 6. In total to date, I devoted 454 hours to this litigation. A chart summarizing the
2 nature of the work I performed and time expended in this action is attached hereto as Exhibit 1 to
3 demonstrate why Class Counsel's request for attorneys' fees and expenses is reasonable and should
4 be approved by the Court. My colleagues and I represented Plaintiffs and the Class on a purely
5 contingent basis. Counsel assumed the significant risk that they would not be compensated for time
6 and out of pocket expenses invested into this contentious case. This risk of nonpayment
7 incentivized counsel to work efficiently, to prevent duplication of effort, and to advance expenses
8 responsibly.

9 7. The time and resources devoted to this action readily justify the requested fee.
10 Moreover, counsel assumed significant risk of nonpayment in initiating and expending attorney
11 hours in this case given the complex legal issues involved and Defendants' vigorous defense of
12 Plaintiffs' and the Class's claims. Despite counsel's effort in litigating, counsel remain completely
13 uncompensated for the time invested in the action, in addition to the expenses we advanced.
14 Moreover, work on this case has necessarily been to the exclusion of work on other matters that
15 likely would have generated fees.

16 8. The costs incurred by my firm for which reimbursement is sought total \$63,927,
17 which were reasonable and necessary to the effective litigation of this case and are the types of
18 expenses that would typically be billed to clients in non-contingency matters, and therefore should
19 be approved. My firm incurred these costs at the risk of receiving nothing in return. A chart listing
20 the costs by category is attached hereto as Exhibit 2.

21 9. The expenses incurred in this action are reflected in my firm books and records. These
22 books and records are prepared from receipts, check records, credit card statements, and other source
23 materials, and are accurate records of the expenses incurred.
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1 I declare under penalty of perjury of the laws of the United States that the foregoing is true
2 and correct.

3 Date: May 1, 2025
4

5 By: /s/ Stefan Coleman
6 Stefan Coleman (*pro hac vice*)
7 *law@stefancoleman.com*
8 **LAW OFFICES OF STEFAN COLEMAN**
9 66 West Flagler Street, Unit 900
10 Miami, Florida 33130
11 Telephone: (877) 333-9427
12
13 *Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,*
14 *and Cheryl Rowan and the Classes*
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EXHIBIT 1

Law Offices of Stefan Coleman Fees

	Stefan Coleman
Hourly Rate	\$730
Complaint and Pre-Complaint Investigation	45.8
Discovery (Fact and Expert Discovery)	321.3
Motion Practice (Motions to Dismiss)	1.3
Motion Practice (Class Certification and Related)	3.2
Motion Practice (Summary Judgment and Related)	3.4
Motion Practice (Preliminary Approval)	2.8
Settlement Efforts (Including All Notice and Administration)	4.6
Client Communication	35
Trial Preparation	8.8
Miscellaneous (General Administrative Case Work and Attorney Strategy and Discussions)	27.8
TOTAL HOURS	454
TOTAL FEES	\$331,420

EXHIBIT 2

Law Offices of Stefan Coleman Litigation Costs and Expenses

Category	Amount
Filing Fees / Process Server Fees	\$317
Expert Costs	\$57,240
Mediation Costs	\$6,370
TOTAL	\$63,927

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John W. Barrett (*pro hac vice*)
jbarrett@baileyglasser.com
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 340-2287

*Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,
and Cheryl Rowan and the Classes*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SARAH BUMPUS, MICHELINE PEKER, *and*
CHERYL ROWAN, *individually, and on behalf of a class
of similarly situated persons,*

Plaintiffs,

v.

REALOGY HOLDINGS CORP.,
REALOGY INTERMEDIATE HOLDINGS
LLC, REALOGY SERVICES GROUP LLC,
REALOGY GROUP LLC, *and* REALOGY
BROKERAGE GROUP LLC (f/k/a NRT
LLC),

Defendants.

Case No.: 3:19-cv-03309-JD

**DECLARATION OF JOHN W.
BARRETT IN SUPPORT OF
MOTION FOR ATTORNEYS'
FEES, COSTS AND SERVICE
AWARD**

Judge: Hon. James Donato
Courtroom: 11

1 I, John W. Barrett, declare as follows:

2 1. I am submitting this declaration in support of our request for attorneys' fees and
3 costs in this action. My purpose is to provide the information required in the District's
4 Procedural Guidance for Class Actions regarding attorney's fees and costs.

5 2. I received a B.A. from the University of Pennsylvania in 1988, and my law degree
6 from Boston University School of Law, *cum laude*, in 1996. From 1996 through 1998, I clerked
7 for Charles H. Haden II, Chief Judge of the United States District Court for the Southern District
8 of West Virginia. I joined Bailey & Glasser as a partner in 2005, and have served as the firm's
9 president and head of contingent practice. Bailey & Glasser is a national firm with approximately
10 ninety attorneys and a particular focus on complex business and multi-party actions, including
11 mass tort and class actions.

12 3. I have handled and won class action, mass action, and individual plaintiff jury
13 trials in federal and state court, and successfully argued appeals to uphold verdicts won in those
14 cases. Some of these cases include:

- 15 • *McEvoy v. Diversified Energy Company*, No. 22-cv-00171, N.D. W. Va.
16 (voidable transfer class action; class settlement pending requiring plugging of
17 class natural gas wells in six states);
- 18 • *The Grissoms, LLC v. Antero Resources*, No. 2:20-CV-2028, S.D. Ohio (certified
19 gas royalty class action, with \$10 million class judgment), *affirmed*, 133 F.4th 605
20 (6th Cir. 2025);
- 21 • *Vance v. DirecTV*, No. 5:17-179, N.D. W. Va. (\$16.875 million TCPA class
22 action settlement);
- 23 • *Krakauer v. Dish Network, L.L.C.*, No. 1:14-cv-00333, M.D. N.C. (five-day
24 TCPA jury trial and a treble damages award for a certified class, resulting in
25 \$61.3 million judgment, *affirmed* 925 F.3d 643 (4th Cir. 2019));
- 26 • *Hankins v. Alarm.com Incorporated and Alarm.com Holdings, Inc.*, No. 4:15-cv-
27 06314, N.D. Cal. (settled TCPA class action for \$28 million);

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- *In re Monitronics TCPA Litig.*, MDL No. 2493, N.D. W.Va. (appointed MDL Co-Lead Counsel; \$28 million TCPA class action settlement);
- *Mey v. Patriot Payment Group, LLC*, No. 5:15-cv-00027, N.D. W.Va. (\$3.7 million settlement in TCPA class action);
- *Mey v. Venture Data, LLC*, No. 5:14-cv-00123, N.D. W. Va. (\$2.1 million TCPA class action settlement);
- *Mey v. Frontier Communications Corp.*, No. 3:13-01191, D. Conn. (\$11 million nationwide TCPA settlement);
- *Generic Drug Litigation (State of West Va. v. Rite Aid of West Va., No. 09-C-27; and State of West Va. v. CVS Pharmacy, Inc., No. 09-C-226* (Circuit Court of Boone County, West Virginia) (as Special Assistant Attorney General, won settlements of more than \$10 million in *parens patriae* consumer protection litigation);
- *Carter v. Forjs Taurus SA et al.*, No. 1:13-CV-24583, S.D. Fla. (class counsel for product liability class action against Brazilian pistol manufacturer; settlement provides for the free exchange of defective pistols for new pistols (unlimited by any claims period), or cash payments of up to \$30 million for returned pistols; total value of settlement \$240 million);
- *Desai v. ADT Security*, No. 11-C-1925, N.D. Ill. (\$15 million TCPA settlement for nationwide class);
- *Brooks v. City of Huntington*, No. 11-C-125 (Circuit Court of Wayne County, West Virginia) (lead trial counsel 2011 jury trial for 40 residents whose homes and properties were flooded by a municipal storm water control system; total recovery exceeded \$1 million); and
- *Ooten v. Massey Coal*, Civil Action No. 02-C-203 (Circuit Court of Mingo County, West Virginia) (trial counsel in two-phase, six-week jury trial alleging mining company damaged the groundwater supplies of coalfield residents; total cash recovery was \$3.2 million, plus injunctive relief).

1 4. My firm, and specifically Brian Glasser and I, were brought into the case in early
2 2023 by our co-counsel to assist at trial. We were sole trial counsel in a similar TCPA case,
3 *Krakauer v. Dish Network, L.L.C.*, No. 1:14-cv-00333, M.D. N.C. At the 2017 trial of that case,
4 we won class damages of more than \$20 million, which the district judge trebled under the
5 statute (47 U.S.C. 227(c)(5)) to \$61.3 million. In a decision that one lawyer told a national
6 publication he expected “to see . . . quoted from now until the end of the century by [plaintiffs’]
7 TCPA class action attorneys,” the class judgment was affirmed on appeal. 925 F.3d 643 (4th Cir.
8 2019). Very few class actions ever get to trial, and fewer still are tried in class actions alleging
9 TCPA violations. None that I know of withstood a challenge to a class judgment on appeal. The
10 experience in *Krakauer* gave us valuable insight into leading a trial in this action.

11 5. Mr. Glasser, who would have served as lead trial counsel in this case, represents a
12 diverse array of plaintiffs and defendants throughout the United States. He has tried cases in 17
13 states, including two mass actions and four class actions. Most recently, he was co-lead trial
14 counsel for the Coalition of Counsel for Justice in Talc Claimants in another “Texas Two-Step”
15 attempt by Johnson & Johnson to discharge liabilities arising from people alleging injury by talc
16 products. In March 2025, after a two-week trial, the Bankruptcy Court for the Southern District
17 of Texas agreed with Mr. Glasser’s client and dismissed the bankruptcy case. Mr. Glasser was
18 recognized by Forbes Media as one of the “Top 200 Lawyers in America” in its first-ever top
19 lawyers list. He is a *cum laude* graduate of Harvard Law School, holds a B.A. from Oxford
20 University (where he was a Rhodes Scholar), and graduated *summa cum laude* from West
21 Virginia University.

22 6. The vast majority of our time was spent on trial preparation and related motion
23 practice. For example, we took a lead role in preparing the trial plan; writing jury instructions,
24 verdict forms, and witness examinations; developing trial themes; identifying and addressing
25 evidentiary issues; and writing motions in limine. We also spent significant time working with
26 expert witness Anya Verkhovskaya, who was our expert witness at trial in the *Krakauer* case.

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1 7. I have reviewed our billing records. After reductions in the exercise of billing
 2 judgment (including the elimination of all time from timekeepers who worked less than 50 hours
 3 on the case), I have determined that we expended 996.3 hours through January 2025, categorized
 4 and summarized as follows:

	John Barrett (Attorney)	Brian Glasser (Attorney)	Panida Anderson (Attorney)	Brittnay Murray (Paralegal)	Grand Total
Hourly Rate¹	\$ 950.00	\$ 1,075.00	\$ 550.00	\$ 400.00	
Discovery (Fact and Expert Discovery)			7		
Motion Practice (Class Certification and Related)	27		21		
Motion Practice (All Other)	60.70		0.50		
Settlement Efforts (Including All Notice and Administration)	3	1.90			
Trial Preparation	302	101.70	260.40	8.60	
Miscellaneous (General Administrative Case Work and Attorney Strategy and Discussions)	38		2.70	161.80	
TOTAL HOURS	430.70	103.60	291.60	170.40	996.30
TOTAL FEES	\$409,165.00	\$111,370.00	\$160,380.00	\$68,160.00	\$749,075.00

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28 ¹ My firm adjusted their rates over the duration of the case. The rate above is the rate used for 2025.

1 George V. Granade (State Bar No. 316050)
2 *ggranade@reesellp.com*
3 **REESE LLP**
4 8484 Wilshire Boulevard, Suite 515
5 Los Angeles, California 90211
6 Telephone: (310) 393-0070

7 Michael R. Reese (State Bar No. 206773)
8 *mreese@reesellp.com*
9 **REESE LLP**
10 100 West 93rd Street, 16th Floor
11 New York, New York 10025
12 Telephone: (212) 643-0500

13 Sabita J. Soneji (State Bar No. 224262)
14 *ssoneji@tzlegal.com*
15 **TYCKO & ZAVAREEI LLP**
16 1970 Broadway, Suite 1070
17 Oakland, California 94612
18 Telephone: (510) 254-6808

19 Hassan A. Zavareei (State Bar No. 181547)
20 *hzavareei@tzlegal.com*
21 Gemma Seidita (State Bar No. 322201)
22 *gseidita@tzlegal.com*
23 **TYCKO & ZAVAREEI LLP**
24 2000 Pennsylvania Avenue, NW, Suite 1010
25 Washington, District of Columbia 20006
26 Telephone: (202) 973-0900

27 *Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,*
28 *and Cheryl Rowan and the Classes*

Brian A. Glasser (*pro hac vice*)
bglasser@baileyglasser.com
John W. Barrett (*pro hac vice*)
jbarrett@baileyglasser.com
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555

Rachel E. Kaufman (State Bar No. 259353)
rachel@kaufmanpa.com
Avi Kaufman (*pro hac vice*)
avi@kaufmanpa.com
KAUFMAN P.A.
237 South Dixie Highway, Floor 4
Coral Gables, Florida 33133
Telephone: (305) 469-5881

Stefan Coleman (*pro hac vice*)
lan@stefancoleman.com
LAW OFFICES OF STEFAN COLEMAN
66 West Flagler Street, Unit 900
Miami, Florida 33130
Telephone: (877) 333-9427

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SARAH BUMPUS, MICHELINE PEKER,
and CHERYL ROWAN, *individually, and on*
behalf of a class of similarly situated persons,

Plaintiffs,

v.

REALOGY HOLDINGS CORP.;
REALOGY INTERMEDIATE HOLDINGS
LLC; REALOGY GROUP LLC; REALOGY
SERVICES GROUP LLC; *and* REALOGY
BROKERAGE GROUP LLC (f/k/a NRT
LLC),

Defendants.

Case No. 3:19-cv-03309-JD

DECLARATION OF SARAH BUMPUS

Date: August 28, 2025
Time: 10:00 a.m.
Place: Courtroom 11, 19th Floor
Judge: Honorable James Donato

1 I, Sarah Bumpus, hereby declare as follows:

2 1. I am a plaintiff and Court-appointed class representative in the above-captioned class
3 action (“Action”). My claims in the Action were first alleged in the First Amended Class Action
4 Complaint filed on December 16, 2019, ECF No. 31.

5 2. I submit this declaration in support of the Settlement and my request for a service
6 award in the amount of \$5,000 for the time I have spent actively engaged as a plaintiff in this Action.

7 3. During the last five-plus years, I have regularly communicated with my counsel
8 regarding this Action and participated in the following tasks:

9 (i) spoke with counsel and assisted in drafting the allegations in the First
10 Amended Class Action Complaint, and reviewed the First Amended Class
11 Action Complaint before it was filed;

12 (ii) reviewed and discussed subsequent pleadings, key motions, and orders
13 throughout the litigation and settlement process, including Plaintiffs’ motion
14 for class certification, the motions for summary judgment, and motion for
15 preliminary approval of the settlement;

16 (iii) participated in discovery, including by searching for, collecting, and producing
17 2,064 Bates stamped pages of documents/files in response to two sets of
18 requests for production of documents by the Realogy defendants and one set
19 of requests for production of documents by former defendant Mojo Dialing
20 Solutions, LLC (“Mojo”); answering two sets of interrogatories by the Realogy
21 defendants and one set of interrogatories by Mojo; and preparing for and
22 sitting for a deposition lasting approximately 5.25 hours taken by the Realogy
23 defendants’ counsel;

24 (iv) prepared to testify at trial;

25 (v) considered and discussed potential settlement, and made myself available by
26 telephone for a mediation with the Honorable Edward A. Infante (Ret.) of
27 JAMS on January 4, 2022, a settlement conference with the Honorable
28 Magistrate Judge Thomas S. Hixson on June 27, 2022, and a mediation with

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Bruce A. Friedman, Esquire, of JAMS on August 25, 2022; and
(vi) reviewed and approved the Settlement Agreement before it was executed and submitted to the Court.

4. In my role as a plaintiff and class representative, I devoted at least 40 hours of my time to this action. Accordingly, I seek an award of \$5,000 for the time and expenses I incurred directly relating to my representation of the Settlement Class in this Action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 5/2/2025 _____.

DocuSigned by:
Sarah Bumpus
By:  _____
780093C6E02E4D0...
Sarah Bumpus

1 George V. Granade (State Bar No. 316050)
ggranade@reesellp.com

2 **REESE LLP**
8484 Wilshire Boulevard, Suite 515
3 Los Angeles, California 90211
Telephone: (310) 393-0070

4 Michael R. Reese (State Bar No. 206773)
mreese@reesellp.com

5 **REESE LLP**
6 100 West 93rd Street, 16th Floor
New York, New York 10025
7 Telephone: (212) 643-0500

8 Sabita J. Soneji (State Bar No. 224262)
ssoneji@tzlegal.com

9 **TYCKO & ZAVAREEI LLP**
1970 Broadway, Suite 1070
10 Oakland, California 94612
Telephone: (510) 254-6808

11 Hassan A. Zavareei (State Bar No. 181547)
hzavareei@tzlegal.com

12 Gemma Seidita (State Bar No. 322201)
gseidita@tzlegal.com
13 **TYCKO & ZAVAREEI LLP**
14 2000 Pennsylvania Avenue, NW, Suite 1010
Washington, District of Columbia 20006
15 Telephone: (202) 973-0900

16 *Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,*
and Cheryl Rowan and the Classes

Brian A. Glasser (*pro hac vice*)
bglasser@baileyglasser.com

John W. Barrett (*pro hac vice*)
jbarrett@baileyglasser.com

BAILEY & GLASSER LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555

Rachel E. Kaufman (State Bar No. 259353)
rachel@kaufmanpa.com

Avi Kaufman (*pro hac vice*)
avi@kaufmanpa.com

KAUFMAN P.A.
237 South Dixie Highway, Floor 4
Coral Gables, Florida 33133
Telephone: (305) 469-5881

Stefan Coleman (*pro hac vice*)
lan@stefancoleman.com

LAW OFFICES OF STEFAN COLEMAN
66 West Flagler Street, Unit 900
Miami, Florida 33130
Telephone: (877) 333-9427

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**
20

21 SARAH BUMPUS, MICHELINE PEKER,
22 *and* CHERYL ROWAN, *individually, and on*
behalf of a class of similarly situated persons,

23 Plaintiffs,

24 v.

25 REALOGY HOLDINGS CORP.;
26 REALOGY INTERMEDIATE HOLDINGS
27 LLC; REALOGY GROUP LLC; REALOGY
SERVICES GROUP LLC; *and* REALOGY
BROKERAGE GROUP LLC (f/k/a NRT
LLC),

28 Defendants.

Case No. 3:19-cv-03309-JD

DECLARATION OF MICHELINE PEKER

Date: August 28, 2025

Time: 10:00 a.m.

Place: Courtroom 11, 19th Floor

Judge: Honorable James Donato

1 I, Micheline Peker, hereby declare as follows:

2 1. I am a plaintiff and Court-appointed class representative in the above-captioned class
3 action (“Action”). My claims in the Action were first alleged in the Third Amended Class Action
4 Complaint filed on February 12, 2021, ECF No. 118.

5 2. I submit this declaration in support of the Settlement and my request for a service
6 award in the amount of \$5,000 for the time I have spent actively engaged as a plaintiff in this Action.

7 3. During the last four-plus years, I have regularly communicated with my counsel
8 regarding this Action and participated in the following tasks:

9 (i) spoke with counsel and assisted in drafting the allegations in the Third
10 Amended Class Action Complaint, and reviewed the Third Amended Class
11 Action Complaint before it was filed;

12 (ii) reviewed and discussed key motions and orders throughout the litigation and
13 settlement process, including Plaintiffs’ motion for class certification, the
14 motions for summary judgment, and motion for preliminary approval of the
15 settlement;

16 (iii) participated in discovery, including by searching for, collecting, and producing
17 12 Bates stamped pages of documents/files in response to two sets of requests
18 for production of documents by the Realogy defendants and one set of
19 requests for production of documents by former defendant Mojo Dialing
20 Solutions, LLC (“Mojo”); answering two sets of interrogatories by the Realogy
21 defendants and one set of interrogatories by Mojo; and preparing for and
22 sitting for a deposition lasting approximately 3.5 hours taken by the Realogy
23 defendants’ counsel and Mojo’s counsel;

24 (iv) considered and discussed potential settlement, and made myself available by
25 telephone for a mediation with the Honorable Edward A. Infante (Ret.) of
26 JAMS on January 4, 2022, a settlement conference with the Honorable
27 Magistrate Judge Thomas S. Hixson on June 27, 2022, and a mediation with
28 Bruce A. Friedman, Esquire, of JAMS on August 25, 2022; and

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(v) reviewed and approved the Settlement Agreement before it was executed and submitted to the Court.

4. In my role as a plaintiff and class representative, I devoted at least 40 hours of my time to this action. Accordingly, I seek an award of \$5,000 for the time and expenses I incurred directly relating to my representation of the Settlement Class in this Action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 2, 2025.

By: Micheline Peker
Micheline Peker (May 2, 2025 09:34 EDT)
Micheline Peker

1 George V. Granade (State Bar No. 316050)
ggranade@reesellp.com

2 **REESE LLP**
8484 Wilshire Boulevard, Suite 515
3 Los Angeles, California 90211
Telephone: (310) 393-0070

4 Michael R. Reese (State Bar No. 206773)
mreese@reesellp.com

5 **REESE LLP**
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7 Telephone: (212) 643-0500

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12 Gemma Seidita (State Bar No. 322201)
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13 **TYCKO & ZAVAREEI LLP**
14 2000 Pennsylvania Avenue, NW, Suite 1010
Washington, District of Columbia 20006
15 Telephone: (202) 973-0900

16 *Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,*
17 *and Cheryl Rowan and the Classes*

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

21 SARAH BUMPUS, MICHELINE PEKER,
22 *and CHERYL ROWAN, individually, and on*
behalf of a class of similarly situated persons,

23 Plaintiffs,

24 v.

25 REALOGY HOLDINGS CORP.;
26 REALOGY INTERMEDIATE HOLDINGS
27 LLC; REALOGY GROUP LLC; REALOGY
SERVICES GROUP LLC; *and* REALOGY
BROKERAGE GROUP LLC (f/k/a NRT
LLC),

28 Defendants.

Brian A. Glasser (*pro hac vice*)
bglasser@baileyglasser.com

John W. Barrett (*pro hac vice*)
jbarrett@baileyglasser.com

BAILEY & GLASSER LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555

Rachel E. Kaufman (State Bar No. 259353)
rachel@kaufmanpa.com

Avi Kaufman (*pro hac vice*)
avi@kaufmanpa.com

KAUFMAN P.A.
237 South Dixie Highway, Floor 4
Coral Gables, Florida 33133
Telephone: (305) 469-5881

Stefan Coleman (*pro hac vice*)
lan@stefancoleman.com

LAW OFFICES OF STEFAN COLEMAN
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Miami, Florida 33130
Telephone: (877) 333-9427

Case No. 3:19-cv-03309-JD

DECLARATION OF CHERYL ROWAN

Date: August 28, 2025

Time: 10:00 a.m.

Place: Courtroom 11, 19th Floor

Judge: Honorable James Donato

1 I, Cheryl Rowan, hereby declare as follows:

2 1. I am a plaintiff and Court-appointed class representative in the above-captioned class
3 action (“Action”). My claims in the Action were first alleged in the Third Amended Class Action
4 Complaint filed on February 12, 2021, ECF No. 118.

5 2. I submit this declaration in support of the Settlement and my request for a service
6 award in the amount of \$5,000 for the time I have spent actively engaged as a plaintiff in this Action.

7 3. During the last four-plus years, I have regularly communicated with my counsel
8 regarding this Action and participated in the following tasks:

9 (i) spoke with counsel and assisted in drafting the allegations in the Third
10 Amended Class Action Complaint, and reviewed the Third Amended Class
11 Action Complaint before it was filed;

12 (ii) reviewed and discussed key motions and orders throughout the litigation and
13 settlement process, including Plaintiffs’ motion for class certification, the
14 motions for summary judgment, and motion for preliminary approval of the
15 settlement;

16 (iii) participated in discovery, including by searching for, collecting, and producing
17 17 Bates stamped pages of documents/files in response to two sets of requests
18 for production of documents; answering two sets of interrogatories; and
19 preparing for and sitting for a deposition lasting approximately two hours and
20 20 minutes taken by the Realogy defendants’ counsel;

21 (iv) prepared to testify at trial;

22 (v) considered and discussed potential settlement, and made myself available by
23 telephone for a mediation with the Honorable Edward A. Infante (Ret.) of
24 JAMS on January 4, 2022, a settlement conference with the Honorable
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Magistrate Judge Thomas S. Hixson on June 27, 2022, and a mediation with Bruce A. Friedman, Esquire, of JAMS on August 25, 2022; and (vi) reviewed and approved the Settlement Agreement before it was executed and submitted to the Court.

4. In my role as a plaintiff and class representative, I devoted at least 40 hours of my time to this action. Accordingly, I seek an award of \$5,000 for the time and expenses I incurred directly relating to my representation of the Settlement Class in this Action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 1, 2025.

By: *Cheryl Rowan*
Cheryl Rowan