

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

CASE NO. 2:19-cv-00403-MRM

DARYL TEBLUM,
individually and on behalf of all
others similarly situated,

CLASS ACTION

Plaintiff,

JURY TRIAL DEMANDED

v.

PHYSICIAN COMPASSIONATE CARE LLC
d/b/a DOCMJ,

Defendant.

**PLAINTIFF’S UNOPPOSED SECOND¹ AMENDED AND RENEWED
MOTION FOR ATTORNEYS’ FEES AND SERVICE AWARD FOR CLASS
REPRESENTATIVE AND MOTION TO FIND NOTICE AND
ADMINISTRATIVE COSTS REASONABLE AND AUTHORIZED²**

Plaintiff Daryl Teblum, on behalf of himself and a class of similarly situated persons, and with the consent of Defendant Physician Compassionate Care LLC d/b/a DocMJ (“Defendant”), hereby respectfully request that the Court (1) deny without prejudice a Service Award for the Class Representative but retain limited

¹ This amended motion is being filed to state the correct case number.

² Plaintiff respectfully requests that the Court withhold ruling on this Motion until after the Second Fairness Hearing. Plaintiff is only filing this request now, as early as possible, to ensure Class Members get notice of Plaintiff’s requested fees, service award, and notice and administrative costs. Accordingly, this motion will be posted to the Settlement Website immediately upon filing.

jurisdiction for one year³, (2) approve Class Counsel’s request for attorneys’ fees⁴, and (3) find that the Notice and Administrative Costs already expended and due to be expended are reasonable and authorized.⁵

I. INTRODUCTION

On January 24, 2022, this Court denied without prejudice Plaintiff’s Motion for Final Approval (the “Order”). [Doc. 74]. First, the Court determined that certain deficiencies in the Settlement Website rendered class member notice inadequate. *See Id.* at pgs. 4-11. Second, the Order denied without prejudice Class Counsel’s request for attorney’s fee because the request was not posted on the Settlement Website. *Id.* at pgs. 12-13. Third, the Court determined that authorization of Notice and Administration Costs was not properly requested. *Id.* at pgs. 13-15.

To correct the first issue, Plaintiff has filed a Renewed Consent Motion for Approval of Renewed Proposed Notice and Objection Procedure. [Doc. 79]. To correct the remaining two deficiencies Plaintiff brings the instant motion (the “Motion”) which will be immediately posted to the Settlement Website—prior to the proposed Re-Notice Program being approved. This will allow Class Members more

³ As discussed below, a recent Eleventh Circuit opinion held that service awards are not allowed under Rule 23. A party in that matter has requested that the Eleventh Circuit rehear the matter *en banc*, and a Judge of the Eleventh Circuit has withheld issuance of the mandate. The request for rehearing is pending as of the time of this filing.

⁴ Class Counsel does not request reimbursement for costs expended.

⁵ As discussed in Plaintiff’s motion requesting approval of the proposed subsequent notice plan, [Doc. 75], the Settlement Administrator, KCC Class Action Services LLC (“KCC”) is not charging any costs/fees for the Re-Notice Program. Accordingly, the Common Fund will not be diminished as a result of the Re-Notice program.

time to object to Plaintiff's request for attorneys' fees and service award if they choose to do so or to file a claim with full notice of all the relevant settlement terms.

II. MOTION FOR ATTORNEYS' FEES AND SERVICE AWARD FOR CLASS REPRESENTATIVE

The Settlement requires Defendant to make available up to **\$736,542.00** for the benefit of the Settlement Class. Settlement, [Doc. 49-1], at Section LL. Each Settlement Class Member who submits a timely, valid, complete and verified Claim Form is entitled to recover up to \$18.00 payable by check and delivered by First Class Mail. *Id.* Plaintiff respectfully submits that this amount is a reasonable outcome for the Settlement Class Members given the state of TCPA law at the time settlement was reached and subsequent legal developments. *See* [Doc. 67 at pgs. 10-13].

Pursuant to the Settlement Agreement, Plaintiff is entitled to request a Service Award of \$5,000 for his role as the Class Representative and to request attorneys' fees of \$184,135.50, or approximately 25% of the Settlement Fund for Class Counsel. Settlement at pgs. 13-14.

1. Service Award

The Settlement provides that Plaintiff may request a Service Award for the Class Representative in the amount of \$5,000. Settlement at pg. 13. Service awards "compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Allapattahx Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006). "[T]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class

action.” *David v. American Suzuki Motor Corp.*, 2010 WL 1628362, at *6 (S.D. Fla. Apr. 15, 2010). The relevant factors include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation. *See, e.g., Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). These factors, as applied to this Action, demonstrate the reasonableness of the requested Service Award to Plaintiff. Plaintiff provided assistance that enabled Class Counsel to successfully prosecute the Action including submitting to interviews with Class Counsel, reviewing all material filings, including approving the Agreement. Declaration of Manuel S. Hiraldo (“Hiraldo Decl.”), previously filed at [Doc 67-1], at ¶ 13.

Based on the foregoing, a Service Award of \$5,000 is reasonable. *See, e.g., Allapattah Services, Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1218-19 (S.D. Fla. 2006) (collecting cases awarding incentive awards to compensate named plaintiffs); *Cabot E. Broward 2 LLC v. Cabot*, No. 16-61218-CIV, 2018 U.S. Dist. LEXIS 192706, 2018 WL 5905415, at *11 (S.D. Fla. Nov. 9, 2018) (awarding each class representative a \$50,000.00 incentive award); *Sawyer v. Intermex Wire Transfer, LLC*, No. 19-cv-22212, 2020 U.S. Dist. LEXIS 160955, at *5 (S.D. Fla Sep. 3, 2020) (awarding the class representative a \$15,000.00 incentive award); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F.Supp. 1226, 1267-68 (N.D. Ill. 1993) (collecting cases approving service awards ranging from \$ 5,000 to \$100,000) (awarding \$10,000 to each named plaintiff); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F.Supp. 1226, 1267-68 (N.D. Ill. 1993) (collecting

cases approving service awards ranging from \$ 5,000 to \$100,000) (awarding \$10,000 to each named plaintiff)); *Drazen v. Godaddy.com, LLC*, No. 19-00563-KD, 2020 U.S. Dist. LEXIS 143273 at *13 (S.D. Ala. August 11, 2020) (approving \$5,000 incentive awards for each of three class representatives).

However, the Eleventh Circuit's decision in *Johnson v. NPAA Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020) has complicated this issue. In *Johnson*, a divided panel determined that service awards were not authorized under Rule 23. *See id.* A request for rehearing *en banc* was filed, and on November 9, 2020 a judge of the Eleventh Circuit withheld issuance of the mandate. As of the time of this filing, the Eleventh Circuit has not ruled on whether it would rehear the matter *en banc*.

As a result, Plaintiff respectfully requests that at the Fairness Hearing, if *Johnson* is still controlling on this Court, that this Court deny Plaintiff's request for a Service Award of \$5,000 **without** prejudice and reserve limited jurisdiction for one year to reconsider the Service Award if *Johnson* is reversed, vacated, or overruled. *See Fruitstone v. Spartan Race Inc.*, Case No. 20:cv-20836, 2021 U.S. Dist. LEXIS 19385, at *20 (S.D. Fla. February 2, 2021) ("The Court preliminarily approves the incentive award for purposes of the issuance of the Class Notice but at final approval will consider whether to deny the request without prejudice and reserve jurisdiction to reconsider the issue of a case contribution award if NPAS is not reversed, vacated, or overruled."); *see also Mosley v. Lozano Ins. Adjusters*, Case No. 19-cv-379-J-32JRK, 2021 U.S. Dist. LEXIS 15726 at *2 (M.D. Fla. January 28, 2021) ("The

Court DEFERS ruling on the issue of the \$5,000 service award and retains jurisdiction to decide the matter pending a final decision in *Johnson v. NPAS Sols., LLC*, The parties are directed to deposit the \$ 5,000 into the registry of the Court pending the Court's determination of the service award issue.”); *see also Hawkins v. JPMorgan Chase Bank, N.A.*, Case No. 19-cv-02174-VMC, 2020 U.S. Dist. LEXIS 213064 at *5 (M.D. Fla. November 15, 2020) (“The Court retains jurisdiction for the limited purpose of allowing the Plaintiff to resubmit a request for a service award, should circumstances so warrant. The Court otherwise declines to retain jurisdiction.”).

2. Application For Attorneys’ Fees

Pursuant to the Settlement Agreement, and consistent with recognized class action practice and procedure, Class Counsel respectfully request an award of attorneys’ fees equal to \$184,135.50, or approximately 25% of the Settlement Fund. Class Counsel and Defendant negotiated and reached agreement regarding attorneys’ fees and costs only after reaching agreement on all other material Settlement terms. Hiraldo Decl., [Doc. 67-1], at ¶ 3. The requested fee is within the range of reason under the factors listed in *Camden I Condo. Ass’n. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991). For the reasons detailed herein, Class Counsel submit that the requested fee is appropriate, fair and reasonable and respectfully requests that it be approved by the Court.

A. The Law Awards Class Counsel Fees from the Common Fund Created Through Their Efforts.

It is well established that when a representative party has conferred a benefit upon a class, counsel is entitled to attorneys' fees based upon the benefit obtained. *Camden I*, 946 F.2d at 771; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The common benefit doctrine is an exception to the general rule that each party must bear its own litigation costs. The doctrine serves the "twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *In re Gould Sec. Litig.*, 727 F. Supp. 1201, 1202 (N.D. Ill. 1989) (citation omitted). The common benefit doctrine stems from the premise that those who receive the benefit of a lawsuit without contributing to its costs are "unjustly enriched" at the expense of the successful litigant. *Van Gemert*, 444 U.S. at 478. As a result, the Supreme Court, the Eleventh Circuit, and courts in this District have all recognized that "[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as whole." *Sunbeam*, 176 F. Supp. 2d at 1333. Courts have also recognized that appropriate fee awards encourage redress for wrongs caused to entire classes of persons, and deter future misconduct of a similar nature.

In the Eleventh Circuit, class counsel are awarded a percentage of the total amount of funds made available through a settlement. In *Camden I* – the controlling authority regarding attorneys' fees in common-fund class actions – the Eleventh Circuit held that "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit,

attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F.2d at 774; see also *Hamilton v. SunTrust Mortg. Inc.*, No. 13-60749-CIV-COHN/SELTZER, 2014 U.S. Dist. LEXIS 154762, at *20 (S.D. Fla. Oct. 24, 2014) (attorneys representing a class action are entitled to an attorneys' fee based solely upon the total benefits obtained in or provided by a class settlement); *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 695 (S.D. Fla. 2014) (noting that in a claims made situation, the attorneys' fees in a class action are determined based upon the total fund, not just the actual payout to the class); *Carter v. Forjas*, 701 F. App'x 759, 766-67 (11th Cir. 2017) ("no case has held that a district court must consider only the actual payout in determining attorneys' fees.") (citing *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295 (11th Cir. 1999)); *Hanley v. Tampa Bay Sports & Entm't Ltd. Liab. Co.*, No. 8:19-CV-00550-CEH-CPT, 2020 U.S. Dist. LEXIS 89175, at *15 (M.D. Fla. Apr. 23, 2020) (noting that the percentage of the fund analysis applies to claims made settlements and that the "percentage applies to the total fund created, even where the actual payout following the claims process is lower."); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1297-98 (11th Cir. 1999) (rejecting argument that fees should be paid solely based on actual payout and stating, "even if we were to accept defendants' argument about the amount on which attorneys' fees should be based, the reversionary nature of the settlement necessarily would mean that 90% of the reduction in attorneys' fees would accrue to the benefit of the defendant[.]"); *Wilson v. EverBank*, No. 14-CIV-22264-BLOOM/VALLE, 2016 U.S. Dist. LEXIS 15751, at *59-60 (S.D. Fla. Feb. 3,

2016) (“Where, as here, a claims-made process is a reasonable method for providing prompt and substantial relief to the class, requiring class members to file claim forms also maximizes the relief available to class members who opt to submit a claim. A settlement’s fairness is judged by the opportunity created for the class members, *not by how many submit claims.*”) (emphasis in original) (quoting *Hamilton*, 2014 U.S. Dist. LEXIS 154762, 2014 WL 5419507, at *7).

The Court has discretion in determining the appropriate fee percentage. “There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case.” *Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 774). The Eleventh Circuit has provided a set of factors the Court should use to determine a reasonable percentage to award as an attorney’s fee to class counsel in class actions:

- (1) the time and labor required;
- (2) the novelty and difficulty of the relevant questions;
- (3) the skill required to properly carry out the legal services;
- (4) the preclusion of other employment by the attorney as a result of his acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the clients or the circumstances;
- (8) the results obtained, including the amount recovered for the Clients;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the “undesirability” of the case;

- (11) the nature and the length of the professional relationship with the clients; and
- (12) fee awards in similar cases.

Camden I, 946 F.2d at 772 n.3 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

These 12 factors are guidelines and are not exclusive. “Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action.” *Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 775). The Eleventh Circuit has “encouraged the lower courts to consider additional factors unique to the particular case.” *Camden I*, 946 F.2d at 775. As applied, the *Camden I* factors support the requested fee.

i. The Claims Against Defendants Required Substantial Time and Labor.

Prosecuting and settling these claims demanded considerable time and labor, making this fee request reasonable. Hiraldo Decl., [Doc. 67-1], at ¶ 15. Class Counsel devoted substantial time to investigating the claims against Defendants and litigating the case, including briefing various motions submitted by Defendant. *Id.* at ¶¶ 16-17. Settlement negotiations consumed further time and resources. *Id.* at ¶ 18. Additionally, time was devoted to negotiating and drafting of the Agreement and the preliminary approval process, and to all actions required thereafter pursuant to the

preliminary approval order. *Id.* This work consumed a substantial amount of time. All told, Class Counsel’s coordinated work paid dividends for the Settlement Class. *Id.* at ¶ 19. Each of the above-described efforts was essential to achieving the Settlement before the Court. *Id.* The time and resources devoted to this Action readily justify the requested fee.

ii. The Issues Involved Were Novel and Difficult, and Required the Skill of Highly Talented Attorneys.

“[P]rosecution and management of a complex national class action requires unique legal skills and abilities.” *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). Class Counsel’s legal work conferred a benefit on the Settlement Class in the face of litigation obstacles and required the acquisition and analysis of factual and legal information.

In any given case, the skill of legal counsel should be commensurate with the novelty and complexity of the issues, as well as the skill of the opposing counsel. Litigation of this Action required counsel trained in class action law and procedure as well as the specialized issues presented here, such as analyzing class certification issues and litigating the novel issue of whether the software used to make the calls was an ATDS, as defined by the TCPA. Hiraldo Decl., [Doc. 67-1], at ¶ 20. Class Counsel possess these attributes, and their participation added value to the representation of this Settlement Class. *Id.*

In evaluating the quality of representation by Class Counsel, the Court should also consider opposing counsel. *See Camden I*, 946 F.2d at 772 n.3; *Ressler*, 149 F.R.D.

at 654. Throughout the litigation, Defendant was represented by capable counsel. Defendant's counsel was a worthy, competent adversary. Hiraldo Decl., [Doc. 67-1], at ¶ 21; *Walco Invs. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) (stating that “[g]iven the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results”).

iii. Class Counsel Achieved a Successful Result.

Given the litigation risks Class Counsel faced, the Settlement represents a successful result. Rather than facing years of costly and uncertain litigation, each Settlement Class Member is entitled to claim a cash benefit of up to \$18.00. Hiraldo Decl., [Doc. 67-1], at ¶ 22.

iv. The Claims Presented Serious Risk.

The Settlement is particularly noteworthy given the combined litigation risks. *Id.* at ¶ 23. As discussed, Defendant raised meritorious defenses. Consideration of the “litigation risks” factor under *Camden I* “recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk. Such aversion could be due to any number of things, including social opprobrium surrounding the parties, thorny factual circumstances, or the possible financial outcome of a case. All of this and more is enveloped by the term ‘undesirable.’” *Sunbeam*, 176 F. Supp. 2d at 1336. Further, “[t]he point at which plaintiffs settle with defendants . . . is simply not relevant to determining the risks incurred by their counsel in agreeing to represent them.” *Skelton v. General Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1988).

The Settlement Fund obtained through the Settlement is substantial, given the complexity of the litigation and the risks and barriers that loomed in the absence of Settlement. Any of these risks could easily have impeded, if not prevented, Plaintiff's and the Settlement Class's successful prosecution of these claims.

The recovery achieved by this Settlement must be measured against the fact that any recovery by Plaintiff and Settlement Class Members through continued litigation could only have been achieved if: (i) Plaintiff was able to establish liability and damages at trial; (ii) the final judgment was affirmed on appeal; and (iii) Defendant's financial situation allowed it to pay a judgment. The Settlement is a fair and reasonable recovery for the Settlement Class in light of Defendant's defenses, and the challenging and unpredictable path of litigation Plaintiff and the certified class would have faced absent the Settlement. Hiraldo Decl., at ¶ 24.

v. Class Counsel Assumed Considerable Risk to Pursue This Action on a Pure Contingency Basis.

In undertaking to prosecute this case on a contingent fee basis, Class Counsel assumed a risk of nonpayment or underpayment. *Id.* at ¶ 25. That risk warrants an appropriate fee. Indeed, “[a] contingency fee arrangement often justifies an increase in the award of attorney’s fees.” *Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens*, 118 F.R.D. at 548).

Public policy concerns – in particular, ensuring the continued availability of capable counsel to represent classes of injured plaintiffs holding small individual claims – support the requested fee. Hiraldo Decl., [Doc. 67-1], at ¶ 26. The progress

of the Action to date shows the inherent risk faced by Class Counsel in accepting and prosecuting the Action on a contingency fee basis. Despite Class Counsel's effort in litigating this Action, Class Counsel remain completely uncompensated for the time invested in the Action, in addition to the expenses Class Counsel advanced. *Id.* at ¶ 27. There can be no dispute that this case entailed substantial risk of nonpayment for Class Counsel.

vi. The Requested Fee Comports with Fees Awarded in Similar Cases.

Counsel's requested fee of 25% of the Settlement Fund is within the range of fees typically awarded in similar cases. *Id.* at ¶ 28. Numerous decisions within and outside of the Southern District of Florida and the Eleventh Circuit have found that a 33.33% fee—significantly higher than requested here—is well within the range of reason under the factors listed by the *Camden I.* See *Legg v. Laboratory Corp. of America*, 14-cv-61543-RLR, Dkt. 227, p.7 (S.D. Fla. Feb. 18, 2016) (FACTA case awarding one-third of gross recovery for attorneys' fees, plus expenses); *Gevaerts v. TD Bank, N.A.*, No. 11:14-cv-20744-RLR, 2015 U.S. Dist. LEXIS 150354, at *27 (S.D. Fla. Nov. 5, 2015) (finding that a request for 30% of a \$20 million dollar fund is justified); *Wolff v. Cash 4 Titles*, No. 03-22778- CIV, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) (“The average percentage award in the Eleventh Circuit mirrors that of awards nationwide—roughly one-third.”) (citing Circuit case law and listing Southern and Middle District of Florida attorneys' fees awards).

Class Counsel's fee request falls within the range of the private marketplace, where contingency fee arrangements often approach or equal forty percent of any recovery. See *Continental*, 962 F.2d at 572 ("The object in awarding a reasonable attorneys' fee . . . is to simulate the market."); *RJR Nabisco, Inc. Sec. Litig.*, Fed. Sec. L. Rep. (CCH) ¶ 94, 268 (S.D.N.Y. 1992) ("[W]hat should govern [fee] awards is . . . what the market pays in similar cases"). And, "[i]n tort suits, an attorney might receive one-third of whatever amount the Plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery." *Blum v. Stenson*, 465 U.S. 886, 904 (1984) (Brennan, J., concurring).

Finally, Class Counsel's fee request also falls within the range of awards in TCPA cases within this Circuit and elsewhere. See *Gottlieb v. Citgo Petroleum Corp.*, No. 9:16-cv-81911, 2017 U.S. Dist. LEXIS 197382, at *7 (S.D. Fla. Nov. 29, 2017) (granting fees and costs amounting to one-third of the \$8,000,000.00 settlement fund); *ABC Bartending School of Miami, Inc., v. American Chemicals & Equipment, Inc.*, No. 15-CV-23142-KMV (S.D. Fla. April 11, 2017) (granting fees and costs amounting to one-third of the \$1,550,000.00 settlement fund); *Guarisma v. ADCAHB Med. Coverages, Inc.*, Case No. 1:13-cv-21016 (S.D. Fla. June 24, 2015) (granting fees and costs amounting to one-third of the \$4,500,000.00 settlement fund).

Consequently, the attorneys' fee requested here, which is well below the cases cited above, is appropriate and should be awarded.

III. NOTICE AND ADMINISTRATION FEES

Plaintiff respectfully requests that this Court find that the Notice and Administrative Costs and Fees expended thus far of \$34,164.99 by the Settlement Administrator, KCC Class Action Services LLC (“KCC”) are reasonable and authorized. *See* Declaration of KCC’s H. Jacob Hack (“Hack Decl.”), at ¶ 10, attached as **Exhibit A**. To date, KCC has sent E-mail Notice and Mail Notice to Class Members on two separate occasions and has also created and operated the Settlement Website and toll-free telephone number where Class Members can call and request Claim Forms and Long Form Notice. *See* Hack Decl. at ¶ 15. KCC expects that if Final Approval is provided by this Court an additional \$11,993.76 will be expended in Administrative Costs and Fees. *See* Hack Decl. at ¶ 16. In total, if Final Approval is provided by this Court, KCC requests \$46,158.75 in costs and fees. *See* Hack Decl. at ¶ 17. The costs and estimated costs of this administration are in line with what KCC charges in similar class action matter. *See* Hack Decl. at ¶ 18. Under the circumstances, Class Counsel believes that the amount invoiced by KCC in connection with administration work in this matter is reasonable and necessary and requests that the Court approve payment to KCC of this sum.

Notably, if this Court approves Plaintiff’s Renewed Proposed Notice and Objection Procedure, KCC estimates that the Re-Notice Program will cost approximately \$22,377. *See* Hack Decl. at ¶ 11. However, KCC will pay the costs for the Re-Notice Program and KCC will not seek reimbursement from the Settlement Fund for those costs. *See* Hack Decl. at ¶¶ 12-13.

IV. CONCLUSION

Plaintiff and Class Counsel respectfully request that, after the Re-Notice Plan has been completed, after the objection period has expired, and after the Second Fairness Hearing, this Court: (1) award Class Counsel attorneys' fees in the amount of 25% of the Settlement Fund; (2) deny Plaintiff's request for a Service Award without prejudice but retain jurisdiction as to the Service Award for one year; and (3) find that the Notice and Administrative Costs expended are reasonable and authorized.

CERTIFICATE OF GOOD FAITH CONFERRAL

The undersigned attorney, in compliance with M.D. Local Rule 3.01(g), certifies that the movant has conferred with counsel for Defendant, and that Defendant does not oppose the instant motion.

Dated: March 2, 2022

Respectfully submitted,

HIRALDO P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 2, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Michael Eisenband
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Counsel for Plaintiff and the Class

EXHIBIT "A"

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DARYL TEBLUM, *individually and on behalf of himself and others similarly situated,*

Plaintiff,

v.

PHYSICIAN COMPASSIONATE CARE LLC,

Defendant.

Case No. 2:19-cv-00403-MRM

DECLARATION OF H. JACOB HACK RE: DENIAL OF FINAL APPROVAL

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I, H. Jacob Hack declare and state as follows:

1. I am a Senior Project Manager with KCC Class Action Services, LLC (“KCC”), located at 462 S. 4th Street, Louisville, KY 40202. KCC was appointed as the Settlement Administrator in this matter and is not party to this action. I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.
2. KCC is a leading class action administration firm that provides comprehensive class action services, including claims administration, legal notification, email and postal mailing campaign implementation, website design, call center support, class member data management, check and voucher disbursements, tax reporting, settlement fund escrow and reporting, and other related services critical to the effective administration of class action settlements. With more than thirty years of industry experience, KCC has developed efficient, secure and cost-effective methods to properly handle the voluminous data and mailings associated with the noticing, claims processing, and disbursement requirements of these matters to ensure the orderly and fair treatment of class members and all parties in interest.
3. KCC has served as the administrator across a wide range of practice types, including securities, antitrust, consumer, employment, and government, and our administrative work has included some of the largest and most complex private settlements, with individual cases that required direct notice to more

1 than 25 million people and single case distributions of more than \$7 billion.

2 KCC has handled the administration for over 7,000 settlements.

3 4. I submit this declaration in response to the order denying Final Approval
4 submitted on January 24, 2022.

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6 5. On Monday, January 24, 2022, Class Counsel alerted KCC that the order
7 denying Final Approval was submitted and requested a review of the website.

8 Upon review, KCC determined that a number of the court documents,
9 including the *Class Action Complaint*, the *First Amended Class Action*
10 *Complaint*, and the *Settlement Agreement and Release*, were left off of the
11 settlement website.
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14 6. KCC determined that at the time the notice campaign was being scheduled, the
15 project manager working on the administration was leaving KCC. In the
16 transition of the administration from one project manager to another, there was
17 a miscommunication about the website and whether or not it was fully up to
18 date. As a result, the court documents were not made available on the website
19 for the duration of the administration.
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22 7. On January 26, 2022, KCC agreed that it will pay the costs for any re-notice
23 plan approved by the Court.

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25 8. On January 27, 2022, KCC made the following documents available on the
26 website: the *Class Action Complaint*, *Defendant Physician Compassionate*
27 *Care LLC d/b/a DocMJ's Answer and Affirmative Defenses to Plaintiff's Class*
28 *Action Complaint*, the *First Amended Class Action Complaint*, *Defendant's*

1 *Motion to Dismiss Plaintiff's First Amended Class Action Complaint,*
2 *Plaintiff's Response in Opposition to Defendant's Motion to Dismiss,*
3 *Plaintiff's Unopposed Motion for Preliminary Approval of Class Action*
4 *Settlement and Incorporated Memorandum of Law, the Settlement Agreement*
5 *and Release, Report and Recommendation on Plaintiff's Unopposed Motion*
6 *for Preliminary Approval of Class Action Settlement, Order on Plaintiff's*
7 *Unopposed Motion for Preliminary Approval of Class Action Settlement,*
8 *Plaintiff's Notice of Filing Revised Short Form Notices and Compliance with*
9 *Court Order on Plaintiff's Unopposed Motion for Preliminary Approval,*
10 *Order (approving short form notice), Unopposed Motion for Final Approval*
11 *of Class Settlement and Application for Service Award and Attorneys' Fees,*
12 *and Order (denying final approval).*

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16 9. In addition to the documents on the website, KCC added the following
17 questions and answers to the Frequently Asked Questions section of the
18 settlement website:
19

20 **Who are the Released Parties?**

21 *"Released Parties" means Physician Compassionate Care, LLC, a Florida limited*
22 *liability company d/b/a "DocMJ," Doctor Compassionate Care Ohio, LLC, an Ohio*
23 *limited liability Company d/b/a "DocMJ," Refuah Care, LLC, a Florida limited liability*
24 *company, and each of their affiliates, agents, employees, members, managers,*
25 *subsidiaries, predecessors, successors, parents, co-venturers, divisions, joint*
26 *ventures and assigns, as well as each of those entities' or persons' past or present*
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28

1 owners, investors, directors, officers, employees, partners, managers, members,
2 principals, agents, underwriters, insurers, co-insurers, re-insurers, indemnitors,
3 shareholders, attorneys, accountants or auditors, banks or investment banks,
4 associates, personal or legal representatives, consultants, vendors, contractors,
5 volunteers, performers, co-marketers, licensors, concessionaires, franchisors, and
6 assigns.

7 **What are the Released Claims?**

8 “Released Claims” means any and all claims, actions, causes of action, rights, suits,
9 defenses, debts, sums of money, payments, obligations, promises, damages,
10 penalties, attorneys’ fees, costs, liens, judgments, and demands of any kind
11 whatsoever that each member of the Settlement Class may have or may have had
12 in the past, whether in arbitration, administrative, or judicial proceedings, whether
13 as individual claims or as claims asserted on a class basis, whether past or present,
14 mature or not yet mature, known or unknown, suspected or unsuspected, whether
15 based on federal, state, or local law, statute, ordinance, regulations, contract,
16 common law, or any other source, that were or could have been asserted in the
17 Complaint, the Action, or that relate to or arise from the Allegations, including, but
18 not limited to, any and all claims under the TCPA or any related state analogue.
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22 10. KCC reviewed and determined that the costs to date for the settlement are
23 \$34,164.99. The original cost of the settlement administration, if Final
24 Approval was given and distribution had occurred, would have cost
25 approximately \$46,158.75 in total.
26

27 11. KCC reviewed and determined that the cost to re-notice to the Class would be
28

1 approximately \$22,377. In total, the cost of the administration with the
2 inclusion of the re-notice campaign will be approximately \$56,893.21.

3 12. Per the agreement with Counsel for this case, KCC will cover the costs of the
4 re-notice campaign.

5 13. Accordingly, the \$22,377 that re-notice to the Class will cost will not be
6 charged to the Settlement Fund.
7

8 14. KCC only seeks \$34,164.99 from the Settlement Fund for costs and fees
9 expended and incurred prior to the re-notice campaign.
10

11 15. A non-exhaustive list of how the \$34,164.99 was incurred and spent follows:

- 12 a. On March 21, 2021 KCC caused the E-mail Notice to be sent to the
13 40,296 eligible class members and the Mail Notice to be printed and
14 mailed to the 573 potential class members.
- 15 b. Of the 40,296 Class Members E-mail Notices that were sent, 33,194
16 were successfully delivered. Of the 7,102 undeliverable records, KCC
17 worked with its data team to review the data and put together a mailing
18 file for records where postal addresses were available. As a result,
19 KCC identified 753 postal addresses. On April 29, 2021, KCC mailed
20 a Mail Notice to these 753 eligible class members.
- 21 c. Since mailing the Mail Notices to the potential class members, KCC
22 has received 114 Mail Notices returned by the USPS with
23 undeliverable addresses. Through credit bureau and/or other public
24 source databases, KCC performed address searches for these
25 undeliverable Mail Notices and was able to find updated addresses for
26 12 eligible class members. KCC promptly re-mailed Mail Notices to
27 the found new addresses.
- 28 d. Per the parties' request, KCC was instructed to perform a supplemental
notice campaign using the same E-mail Notice and Mail Notice as the
initial notice campaign to class members where a claim form had not
yet been received.

- 1 e. On May 14, 2021, KCC caused supplemental E-mail Notice to be sent
2 to 40,239 eligible class members and supplemental Mail Notice to be
3 printed and mailed to 556 potential class members.
- 4 f. On or about March 21, 2021, KCC established the settlement class
5 website at www.physiciancompassionatecaretcpasettlement.com to
6 provide information to potential class members and to answer
7 frequently asked questions.
- 8 g. KCC established a toll-free telephone number at 1-844-917-2017.
9 Eligible class members could call and obtain information about the
10 Settlement or request a Claim Form and Long-Form Notice. The
11 telephone hotline became operational by or around March 21, 2021
12 and is accessible 24 hours a day, 7 days a week.

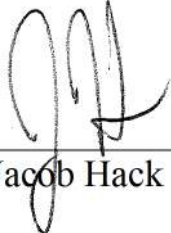
13 16. KCC also expects that if Final Approval is provided by this Court, costs and
14 fees related to the distribution of the Settlement Fund to Class Members will
15 cost an additional \$11,993.76.

16 17. In total KCC seeks \$46,158.75 in costs and fees related to notice and
17 administration.

18 18. The costs and estimated costs of this administration are in line with what KCC
19 charges in similar class action matters.

20 I declare under penalty of perjury under the laws of the United States of America
21 that the foregoing is true and correct.

22 Executed on February 16, 2022:

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24
25
26
27
28


H. Jacob Hack