IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

SUSAN DRAZEN, on behalf of herself and other persons similarly situated, **Plaintiffs,** **v.** **GODADDY.COM, LLC, a Delaware Limited Liability Company,** **Defendant.**	**Civil Action: 1:19-00563-KD-B**
JASON BENNETT on behalf of himself and other persons similarly situated, **Plaintiffs,** **v.** **GODADDY.COM, LLC, a Delaware Limited Liability Company,** **Defendant.**	**Civil Action: 1:20-00094-KD-B**

PLAINTIFFS' MOTION & MEMORANDUM IN SUPPORT OF
RENEWED AWARD OF ATTORNEY'S FEES, COSTS, AND EXPENSES

Dated: October 18, 2024

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MEMORANDUM OF LAW

I. INTRODUCTION

The saga of this case has taken place through more than eight (8) years of contentious and complex litigation, including:

1. More than three years of motion practice and discovery in two separate actions in the United States District Court for the District of Arizona regarding the conduct and technology underlying the claims made by the Class;
2. A contested Class Certification Motion and resulting Order that was affirmed by the Ninth Circuit Court of Appeals;
3. A contentious mediation overseen by a former federal judge, followed by almost a full year of arm's-length subsequent negotiations that yielded the Class Settlement Agreement;
4. The consolidation of three (3) separate class actions into the above-styled cause;
5. A long and detailed Settlement Approval process that required the consideration of Article III Standing precedents (that differed in the various jurisdictions in which Class Members resided);
6. The Final Approval of the Class Settlement over the objection of a single Class Member; and
7. A prolonged post-approval appeal process that consisted of:
    a. Full and contested briefing of the issues raised by the sole Objector in a class of more than one million members to the Class Settlement;

b. A Panel Opinion, entered *sua sponte* without briefing or oral argument by the Parties, finding that the Class lacked Article III Standing under *Salcedo v. Hanna*, 936 F.3d 1162 (11th Cir. 2019);

c. An *En Banc* Rehearing, sought by Class Counsel, that resulted in the overturning of the *Salcedo* precedent and the remand of the appeal to the Panel for consideration of the issues raised by the sole Objector to the Class Settlement;

d. An ill-drafted Panel Opinion that did not clearly state the Panel's binding ruling;

e. A Petition for Panel Rehearing filed by Class Counsel regarding the Panel Opinion; then, most-recently,

f. An Order Granting Class Counsel's Petition for Panel Rehearing and a Ruling by the Eleventh Circuit Panel that its opinion affirmed the Court's approval of the settlement but requires that attorney's fees be calculated using the Loadstar method in accordance with CAFA's "coupon" provisions.

The settlement benefits provided to the Class through the Settlement Agreement were excellent at the time of the Final Approval in 2019. Today, a half-decade after Final Approval, the benefits are extraordinary given the intervening ruling of the United States Supreme Court in *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021) (narrowing the definition of an ATDS to an extent that no dialing system in current use – including the systems used by GoDaddy - would ever run afoul of the *Facebook* definition) that renders the Claim Members' legal claims otherwise worthless, and given the work done by Class Counsel to protect the Settlement Agreement through the complex appeals process. In short, but for the work of Class Counsel to preserve the Settlement Agreement through the twists and turns of the objection and appeals, the Class would have gotten nothing.

Now, Class Counsel hereby request a total attorney's fee of $10,500,000, plus reimbursement of their out-of-pocket costs and litigation expenses incurred in litigation and mediation. Class Counsel understand that the Objector's attorneys intend to seek a portion of these attorney's fees based on the benefits they provided the Class, such as assisting in establishing standing in the *en banc* appeal. Class Counsel do not oppose an award from their own attorneys' fees to Objector's counsel in an amount to be determined by the Court. As discussed herein, however, the total sum sought by Class Counsel is supported by Class Counsel's lodestar alone, which is the analysis that this Court should consider pursuant to the Eleventh Circuit's July 16, 2024 Order.

As explained in detail below, Class Counsel's request for attorney's fees, expenses, and costs is amply justified in light of the investment, risks, exceptional relief provided under the Settlement Agreement, and work done to preserve that relief in light of the rapidly shifting legal landscape. The requested fee is well within the range found to be reasonable by the Eleventh Circuit and is consistent with awards approved in similar consumer class actions, including numerous TCPA class settlements. Further, the requested fee is also well supported by Class Counsel's lodestar, which reflects the extraordinary amount of effort that this nearly decade-old litigation required to date to achieve and preserve the Settlement Agreement.

The requested attorney's fees, expenses, and costs are amply justified in light of the excellent results obtained for the Settlement Class members, and Class Counsel respectfully request that the Court approve a fee of $10,500,000.00, as well as the customarily-awarded expenses and costs incurred of $493,908.67.

II. BACKGROUND

A. Nature of the Claims and Procedural History

This Action culminates three class action lawsuits against GoDaddy. One of those actions was filed by Plaintiff Bennett in the Southern District of Alabama on June 20, 2016. Plaintiff Bennett alleged that he received numerous automated calls on his cellular telephone from GoDaddy attempting to get Plaintiff to renew services that he had previously purchased but which had expired. *See Bennett v. GoDaddy.com, LLC*, No. 16-cv-03908 (D. Ariz.) (the "*Bennett* Litigation"), Dkt. No. 1, at ¶¶ 12, 14–15. Bennett further alleged that GoDaddy failed to obtain his written consent to place such telemarketing calls. *Id.* at ¶ 17. As such, Bennett alleged the calls he received were unauthorized and in violation of the TCPA. *Id.* at ¶¶ 19, 46. The case was subsequently transferred to the U.S. District Court for the District of Arizona, and on January 27, 2017, GoDaddy filed its Amended Answer to Plaintiff Bennett's Complaint. *See* No. 16-cv-03908, Dkt. No. 37.

Following GoDaddy's Amended Answer, Plaintiff Bennett engaged in extensive discovery practice, seeking information regarding the equipment GoDaddy used to place the calls at issue, information regarding GoDaddy's efforts to obtain consent to place the calls at issue, as well as complex discovery regarding the underlying "purpose" of the calls as it relates to the definition of "telemarketing." Bennett also pursued issues pertaining to class discovery, such as the identities of the individuals who received calls from GoDaddy that were alleged to have been unauthorized telemarketing calls.

In addition to written discovery, the Parties participated in numerous fact and expert depositions. Thanks to Plaintiff Bennett's efforts in pursuing discovery, on July 27, 2018, Plaintiff Bennett was able to move for class certification. No. 16-cv-03908, Dkt. No. 111. Plaintiff Bennett sought to certify a class of individuals who had received calls to their cellular telephones from

GoDaddy pursuant to two specific call campaigns. *Id.* at 3:24–26. On March 15, 2019, following full briefing on his motion for class certification and almost three years after initially filing suit, the court in the District of Arizona granted Plaintiff Bennett's motion for class certification. No. 16-cv-03908, Dkt. 131.

GoDaddy, faced with the prospect of a fully certified class, then proceeded to challenge the District Court's grant of class certification and filed a petition to the Ninth Circuit pursuant to Fed. R. Civ. P. 23(f). No. 16-cv-03908, Dkt. No. 136. Following full briefing, the Ninth Circuit denied the petition. *See Bennett v. GoDaddy.com, LLC*, No. 19-80037, Dkt. No. 136 (9th Cir. April 2, 2019).

Another action against GoDaddy was filed by Plaintiff Herrick (who was originally considered as a Class Representative in this matter but was withdrawn as he lacked standing under the then-precedential *Salcedo* standard). On January 28, 2016, Herrick filed his Class Action Complaint against GoDaddy in the District of Arizona alleging that he received text message advertising on his cellular telephone from GoDaddy containing promotional offers without his prior express written consent. *See Herrick v. GoDaddy.com, LLC*, No. 16-cv-00254 (D. Ariz.) (the "*Herrick* Litigation"), Dkt. No. 1, at ¶¶ 23, 25, 26.

On August 30, 2016, following the Supreme Court's decision in *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540 (2016), GoDaddy filed its Motion to Dismiss Plaintiff Herrick's Complaint for lack of subject matter jurisdiction. *See* No. 16-cv-00254, Dkt. No. 31. Following full briefing on the motion and supplemental submissions by the Parties, the court in the *Herrick* Litigation denied the Motion to Dismiss without prejudice to renew. While GoDaddy subsequently renewed its Motion to Dismiss (*see* No. 16-cv-00254, Dkt. No. 66), it ultimately withdrew the motion without prejudice on February 1, 2017. *See* No. 16-cv-00254, Dkt. No. 67.

Contemporaneously with defending against GoDaddy's motion practice, Plaintiff Herrick proceeded with substantial discovery, obtaining written discovery and documents and taking multiple depositions. On March 31, 2017, GoDaddy filed a Motion for Summary Judgment on the issue of whether the equipment used to send the text message advertising was an Automated Telephone Dialing System ("ATDS") under the TCPA. *See* No. 16-cv-00254, Dkt. No. 79. Following full briefing on the motion, the court in the District of Arizona granted GoDaddy's Motion for Summary Judgment on May 14, 2018. No. 16-cv-00254, Dkt. No. 107.

Plaintiff Herrick appealed this ruling to the Ninth Circuit Court of Appeals, which the Parties fully briefed. *See Herrick v. GoDaddy.com, LLC*, No. 18-16048 (9th Cir.). It was only pursuant to the Parties' joint motion to stay the appeal pending final approval of the Settlement Agreement before this Court that, on December 18, 2019, the Ninth Circuit stayed the appeal. *See* No. 18-16048, at Dkt. No. 45.

On August 21, 2019, in the midst of the lawsuits being prosecuted by Plaintiffs Bennett and Herrick, Plaintiff Drazen filed her original Class Action Complaint against GoDaddy before this Court. Dkt. No. 1. Similar to Plaintiffs Bennett and Herrick, Plaintiff Drazen also alleged that GoDaddy sent automated text messages without valid consent and in violation of the TCPA. Dkt. No. 1, at ¶¶ 7, 9, 18. She also alleged that GoDaddy made automated telephone calls in violation of the statute. *Id.* As a recipient of both forms of telemarketing, Plaintiff Drazen was in a unique position to proceed against GoDaddy on behalf of all individuals who potentially suffered a TCPA violation.

B. Settlement Negotiations

Throughout the course of the *Bennett* Litigation, Plaintiff Bennett and GoDaddy, through counsel, periodically engaged in informal settlement discussions. These discussions ultimately led

Bennett and GoDaddy to participate in a full-day mediation in June 2019 before the Honorable Wayne Andersen (Ret.) of JAMS Chicago, a former District Court Judge in the Northern District of Illinois. The Parties' negotiations at the mediation were hard fought and at arm's-length, stretching well into the evening. The Parties were ultimately able to confirm the general terms of a class settlement on June 17, 2019. Over the course of the next three months, the Parties worked diligently to reduce these general terms to a final, fully-executed settlement agreement.

These negotiations involved innumerable conversations among the Parties, including multiple follow-up calls with Judge Andersen, during which the Parties sought guidance on the resolution of questions and disputes regarding the settlement terms. Furthermore, after the *Drazen* Litigation was filed, the Parties agreed to involve that action in a global resolution of the claims at issue. In September 2019, Bennett, Drazen, GoDaddy, and their respective counsel entered into the original settlement agreement. In December 2019, the Parties amended the settlement to formally include Herrick as a Plaintiff in this settlement and to include his counsel as Class Counsel for the Settlement Class in light of the substantial discovery and significant risk GoDaddy faced as a result of the *Herrick* Litigation.

After the Parties entered into their Agreement, Bennett and GoDaddy sought formal transfer and consolidation of the *Bennett* Litigation, which this Court granted on February 21, 2020. Dkt. No. 29. Subsequently, the Parties engaged in extensive additional negotiations and discussions pursuant to the Court's February 21, 2020 Order seeking clarification following the Parties' initial filing of their Motion for Preliminary Approval. Dkt. Nos. 20, 30, 44. These discussions, and the multiple hearings and submissions before this Court, ultimately culminated in the Parties executing the Second Amended Settlement Agreement that this Court preliminarily approved on June 9, 2020. Dkt. No. 49.

C. Final Approval of the Class Settlement

The Settlement Agreement provides for thirty-five million dollars ($35,000,000.00) in compensation made available to Settlement Class members. Exhibit A, attached hereto, at ¶ 50. Settlement Class members who submitted an approved Claim and elected to receive a Cash Award will each receive a check in the amount of thirty-five dollars ($35.00). Ex. A, at ¶ 51(a). In the alternative, each Settlement Class member who submitted an approved Claim and elected to receive a Voucher Award will receive a voucher in the amount of one hundred fifty dollars ($150.00). Ex. A, at ¶ 51(b). The Voucher Award will be redeemable online at GoDaddy's website or over the telephone, and will be fully transferrable, good on all products and services offered by GoDaddy, and will require no minimum purchase. Ex. A, at ¶ 51(b).

On January 10, 2020, Class Counsel moved for preliminary approval of the Class Settlement. Following revisions to the settlement class definition requested by this Court after extensive review of the settlement agreement, on June 9, 2020, preliminary approval was granted of the Parties' Second Amended Settlement Agreement (the "Settlement Agreement" or "Settlement").

Following preliminarily approval, the Parties commenced notice of the Settlement on July 9, 2020, with the Settlement Administrator sending notice to the approximately 1.2 million potential Settlement Class Members. The settlement class responded with overwhelmingly positive approval of the settlement: only 11 class members requested to be excluded; only one valid objection was received; and 24,058 class members filed claims, with 11,662 filing a claim for the $35 Cash Award, and 12,396 filing a claim for the $150 Voucher Award.

On August 31, 2020, Objector-Appellant Pinto ("Objector" or "Pinto"), represented by Bandas Law Firm, P.C., filed his objection to the Settlement with the Court. Objector primarily argued that the settlement was a "coupon settlement under CAFA."

On December 14, 2020, after full briefing on the objection filed by Mr. Pinto, this Court held a final approval hearing and gave Objector a full opportunity to present his objection in open court. On December 23, 2020, the Court entered its Final Judgment and Order Approving Class Settlement and denying Mr. Pinto's objection in its entirety. Objector appealed.

D. The Appeal

Before any briefing of the issues raised by Pinto in his appeal, the U.S. Supreme Court issued its ruling in *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021). The effect of *Facebook* in this matter left Class Counsel wth no option other than to protect the approved Class Settlement Agreement. Negotiating a revised settlement with GoDaddy was not an option, and any ruling that vacated or amended the Class Settlement Agreement in any material manner would have resulted in GoDaddy terminating the Settlement Agreement, the filing of an indefensable motion for summary judgment based on *Facebook*, and the ultimate dismissal of the claims made by the Class. In short, *Facebook* rendered the preservation of the Class Settlement Agreement an "all or nothing" proposition for the Class Members.

With *Facebook* looming outside the confines of an approved settlement, Class Counsel proceeded with briefing and oral argument of the isues raised by Pinto on appeal. On March 13, 2023, the Eleventh Circuit Panel (without any briefing or oral argument on standing), *sua sponte* invalidated the Settlement because the class included recipients of a single text message, who lacked standing under a recent Eleventh Circuit decision. *Drazen v. Pinto*, 41 F.4th 1354, 1362 (11th Cir. 2022), *vacated*, 61 F.4th 1297 (Mar. 13, 2023)), relying on *Salcedo*, 936 F.3d 1162.

Class Counsel filed a Petition for Rehearing *En Banc* that the full Eleventh Circuit granted. The *En Banc* Court considered briefing and oral argument made by the parties, and ruled in favor of the Class. The *En Banc* Court ruled that standing existed in this matter for all Class members,

including those that received a single text message, overturned *Salcedo*, and remanded the matter to the Panel for consideration of the issues raised in the appeal.

The Panel then entered a 110-page opinion authored by Senior Judge Tjoflat. The construction of this opinion, entitled "Opinion of the Court," suggested to a casual reader that Judge Tjoflat's opinion was, in fact, the opinion of the Court. However, Judge Tjoflat's opinion was not the Opinion of the Court. No other judge joined Judge Tjoflat's opinion in full. Judge Wilson wrote a separate opinion – joined by Judge Branch – stating that he "concur[red] in the judgment to the extent that [he] concur[s] with the analysis in Section III.C.iii" of Judge Tjoflat's opinion.

The opinion of Judge Wilson, joined by Judge Branch, "would have addressed only the district court's erroneous determination that this was not a coupon settlement and the related attorney's fees calculation issue." *Id.* Judge Wilson agreed with Judge Tjoflat's analysis "explain[ing] how district courts should address attorney's fees in a coupon settlement." *Id.* Judge Wilson, however, did not adopt any other analysis or basis in Judge Tjoflat's 110-page opinion. *Id.* Judge Wilson's opinion – inaccurately titled "Concurring in the Judgement" – was joined by two judges. Accordingly, as this Court recognized in its September 24, 2024 Order (Dkt 103), Section III.C.iii is the Opinion of the Court. *Anders v. Hometown Mortg. Servs., Inc.*, 346 F.3d 1024, 1031 n.6 (11th Cir. 2003). To ensure clarity on this matter, Class Counsel filed a Petition for Panel Rehearing. The same was granted and the Panel issued its final Opinion: "that the opinion of this Court is delivered solely in Section III.C.iii, in which Judges Wilson, Branch, and Tjoflat joined."

Thus, the Eleventh Circuit (by a 2-1 vote) affirmed the approval of the Settlement. It reversed only the award of attorney's fees, holding that the Court used the wrong standard in

awarding fees and instead must do so in the manner prescribed by the Class Action Fairness Act ("CAFA") for "coupon settlements." The remainder of the Final Approval Order is unaffected by the Panel Opinion.

As such, despite the housekeeping matter of addressing attorney's fees and costs, Class Counsel has successfully defended the benefits provided to the Class by the Settlement Agreement by ensuring that the Final Approval order was upheld—thereby avoiding an event that would allow the Defendant to terminate the Settlement Agreement, which would have ensured the Class would receive nothing due to *Facebook*. Class Counsel should be fairly compensated for this effort and result.

III. ARGUMENT

As discussed, the Eleventh Circuit's majority opinion held that 28 U.S.C. § 1712 (CAFA) is applicable to the calculation of attorney's fees in this case. That provision allows for the calculation of attorney's fees using the lodestar approach. Section 1712(b)(2) specifically authorizes the use of a multiplier. Specifically, § 1712 states:

> (a) Contingent Fees in Coupon Settlements.—
>
> If a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney's fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed.
>
> Other Attorney's Fee Awards in Coupon Settlements.—
>
> (1) In general.—
>
> If a proposed settlement in a class action provides for a recovery of coupons to class members, and a portion of the recovery of the coupons is not used to determine the attorney's fee to be paid to class counsel, any attorney's fee award shall be based upon the amount of time class counsel reasonably expended working on the action.
>
> (2) Court approval.—

> Any attorney's fee under this subsection shall be subject to approval by the court and shall include an appropriate attorney's fee, if any, for obtaining equitable relief, including an injunction, if applicable. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney's fees.

Here, lodestar is the appropriate basis for the fee award calculation since no portion of the fee award is based on the award of coupons.

A. The Lodestar Method Should Be Used to Calculate the Attorney's Fees.

The plain language of § 1712 permits the Court to use either the percentage-of-recovery method under subsection (a) or the lodestar method under subsection (b). As the Fourth Circuit recently explained:

> Although CAFA's settlement provisions may not represent the height of artful drafting, a fair reading of § 1712 reveals that the statute is permissive in nature. By its terms, a district court may choose to "attribute" attorney's fees to a settlement's provision of "coupons" using the percentage-of-recovery method under subsection (a), in which case the fee calculation must be based on the value of any "coupons" actually redeemed by class members — not a defined face value. See 28 U.S.C. § 1712(a). On the other hand, subsection (b) provides that if a court does not use "a portion of the recovery of the coupons" in determining its attorney's fees award, the award "shall be based upon the amount of time class counsel reasonably expended working on the action" — in other words, the statute approves the lodestar approach. Id. § 1712(b)(1).

In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices Litig., 27 F.4th 291, 302 (4th Cir. 2022), *citing In re Sw. Airlines Voucher Litig*., 799 F.3d 701, 707 (7th Cir. 2015) ("[Section] 1712 allows a district court discretion to use the lodestar method to calculate attorney fees even where those fees are intended to compensate class counsel for the coupon relief he or she obtained for the class"); *Galloway v. Kan. City Landsmen, LLC*, 833 F.3d 969, 974-75 (8th Cir. 2016) (adopting the Seventh Circuit's Southwest Airlines interpretation as more consistent with broad discretion afforded to district courts in calculating attorney's fees); *Linneman v. Vita-Mix Corp*., 970 F.3d 621, 627 (6th Cir. 2020) (CAFA settlement provisions

permit use of lodestar method in calculating attorney's fees in "coupon" settlements, without regard for "coupon" redemption rates).

In its Opinion, the Eleventh Circuit adopted this majority view: "The attorney's fees for coupon settlements under CAFA may be based on the value of the coupons that are redeemed, the lodestar method, or a combination of both." *Drazen*, 106 F.4th at 1350. It explained that "[a]ll of the attorney's fees in a settlement including coupons are not simply "attributable to the award of coupons." *Id.*, *citing Linneman*, 970 F.3d at 625-28.

Here, because the Settlement permissively offered either cash or vouchers to class members, it would be inequitable to award fees based only on the number of class members who elected to forego a cash award in favor of the voucher. Because the Settlement was a fund out of which a claimant could take cash or a voucher, it would not make sense to award fees based on the recovery of the vouchers in isolation. As in *Lumber Liquidators*, the Court should apply the lodestar method to determine fees here.

The Eleventh Circuit did note that the redemption rate – or claim rate here – is relevant to "the fair, reasonable, and adequate assessment of the settlement as a whole." *Drazen*, 106 F.4th at 1350. To the extent relevant, the claim/redemption rate here further supports the Court's conclusion of settlement reasonableness. Approximately 24,000 class members submitted claims, roughly evenly split between those who selected cash and those who selected a voucher. This is consistent with claim rates in large consumer class actions. *See, e.g., Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 329 n.60 (3d Cir. 2011) ("consumer claim filing rates rarely exceed seven percent, even with the most extensive notice campaigns.").

Moreover, this Court has already held that the Settlement is fair, reasonable, and adequate overall, and the Eleventh Circuit did not disturb that holding on appeal. The specter of *Facebook*

underscores how good the Settlement is for the Class and the yeoman's work counsel performed making and protecting it.

B. The Requested Attorney's Fees are Reasonable Given the Significant Amount of Work Required to Achieve the Excellent Result for the Class.

Class Counsel invested substantial time and effort during nearly 8½ years of litigation. This "lodestar" is calculated by multiplying the number of hours reasonably spent times a reasonable hourly rate. *In re Progressive Ins. Litig.*, 2008 WL 11348505, at *7.

As stated in Class Counsel's attached Declarations, at the time Class Counsel filed the original fee request in 2020, Class Counsel had expended a total of 5,423.2 hours in uncompensated time in order to achieve the Settlement in this case, accounting for $2,800,053.00 in attorney's fees. *See* Declaration of Myles McGuire, Dkt. 50-2, at ¶ 18; Declaration of John Cox, Dkt. 50-3, at ¶ 13; Declaration of Earl Underwood, Dkt. 50-4, at ¶ 14; Declaration of Phillip A. Bock, Dkt. 50-5, at ¶ 19.

Since then, Class Counsel have expended 3,688.9 additional hours of time in responding to inquiries from Settlement Class Members; preparing final approval papers; reviewing class member claims; and most extensively, in successfully defending the Settlement during the extensive appellate proceedings that have taken place since, including extensive briefing and oral argument.[1] Declaration of Myles McGuire, attached hereto as Exhibit B, at ¶¶ 20, 21; Declaration of John R. Cox, attached hereto as Exhibit C, at ¶¶ 13–16; Declaration of Earl P. Underwood, attached hereto as Exhibit D, at ¶¶ 14–16; Declaration of Phillip A. Bock, attached hereto as Exhibit E, at ¶ 10. Class Counsel anticipate spending many additional hours in the future

[1] To the extent the Court would like to review Class Counsel's billing records, Class Counsel will submit them upon request.

advocating on behalf of the Settlement Class members, especially if there are any further appellate proceedings following the Court's ruling on this Motion.

As explained in Class Counsel's Declarations, numerous state and federal courts, including courts in this Circuit, have approved Class Counsel's then-current hourly rates as reasonable considering their experience and expertise in litigating similar consumer class actions. McGuire Decl., at ¶ 19; Bock Decl., at ¶ 11; *see also* Declaration of Grant Stiefel, attached hereto as Exhibit F. Mr. Stiefel is a well-regarded expert on appropriate rates for attorney's fees. Stiefel Decl. at ¶¶ 12–20. He has reviewed the biographies of the attorneys who billed time to this matter, as well as the concurrently-filed Declarations of Myles McGuire, Phillip A. Bock, John R. Cox, and Earl P. Underwood; Class Counsel's billing records; and surveys, databases, and legal fee matrices that are commonly used, cited, and relied upon by experts in this field. *Id.*, ¶¶ 40–42.

Mr. Stiefel concludes that "[t]he hourly rates requested by Class Counsel are well within the range of hourly rates charged by and awarded to comparably qualified and experienced attorneys for similarly complex national class action litigation. *Id.*, ¶ 46. Further, "[t]he hourly rates sought by Class Counsel are in line with—and in many instances lower than—hourly rates awarded by Alabama district courts for complex class action litigation in other cases." *Id.*, ¶ 54. "Class Counsel's rates are also substantially lower than the hourly rates charged by prominent TCPA defense firms [and] are also lower than the rates typically billed by large national law firms for the defense of consumer class actions like this one. They are also lower than the average range of class action rates for class action plaintiffs' lawyers." *Id.* ¶¶ 69, 71. Finally, "Class Counsel's billing rates on this matter are lower than the range of 2020 rates from the NALFA Survey; when adjusted for inflation, Class Counsel's current partner rates are around forty percent lower than the range of equivalent 2024 rates." *Id.*, ¶ 72.

The time and effort invested by Class Counsel through the epic appeals saga of this case is of paramount importance. Without the time, effort and skill of Class Counsel through a heavily litigated three-and-a-half-year appeal – which included constantly-changing caselaw directly applicable to the case, *en banc* review and the overturning of established Eleventh Circuit precedent, multiple mediations with Objector Counsel and attempts to approve objector settlement agreements, and a rarely granted Petition for Panel Rehearing that clearly delineated the extent of the Panel Opinion – the Class Members would likely have received no benefit from the Settlement.

Where, as here, Class Counsel's "work is performed on a contingency basis and . . . is of a high quality" the Court should apply a "multiplier" to the base lodestar to determine the appropriate fee award under the lodestar analysis. *See Pinto*, 513 F. Supp. 2d at 1344; *In re Progressive Ins. Litig.*, 2008 WL 11348505, at *7; Declaration of William B. Rubenstein, attached hereto as Exhibit G, at ¶¶ 16–17 (explaining the typical practice of awarding positive multipliers for attorneys who prosecute consumer class actions). Here, with a total base lodestar of $5,270,145.50, the requested fee award results in a multiplier of just 1.99.

This is well within the range of multipliers commonly applied by other courts in this Circuit in similar complex class actions and is, in fact, far below the multipliers that many courts in this Circuit have found reasonable. *See, e.g., Pinto*, 513 F. Supp. 2d at 1344 (noting that "multiples much higher than three have been approved" and citing to cases approving multipliers as high as 12 times the lodestar); *In re Progressive Ins. Litig.*, 2008 WL 11348505, at *7 (similarly noting that multipliers "between 2.5 and 4" are "reasonable"); *see also* Stiefel Decl. at ¶ 90 ("significantly greater multipliers – 4.0 and above – have often been applied in fee awards in complex class action litigation"); Rubenstein Decl. at ¶ 21 (outlining 153 settlements similar in size where courts awarded a multiplier of 2 or higher).

Importantly, a multiplier of just 1.99 is not only reasonable but warranted given the contingent nature of the litigation and the significant risks undertaken by Class Counsel—including their efforts at the class certification and appellate levels. Given the defenses raised by GoDaddy, and particularly in light of the *Facebook* decision, the Eleventh Circuit's initial ruling on standing, and the Eleventh Circuit's subsequent panel ruling considering Objector's arguments as to the merits of the Settlement, Class Counsel and the Settlement Class members have faced, and continue to face, a real risk of achieving no recovery whatsoever. *See* Stiefel Decl. at ¶ 92 ("A lodestar multiplier is particularly appropriate here, where—given the impending U.S. Supreme Court ruling in *Facebook v. Duguid* that would have eviscerated Plaintiffs' case—there was likelihood of no recovery *at all*.") (emphasis in original); Rubenstein Decl. at ¶ 29 (noting that "Class Counsel's vigilance in moving the case across the finish line in this Court as the [Facebook] case was being briefed and argued was nothing short of brilliant"; *Id.* at ¶ 30 (noting that Class Counsel's reversal of *Salcedo* "was an extraordinary achievement for Class Counsel against absolutely enormous odds" given that "only about 4 in 1,000 cases are heard en banc, fewer still reversed.").

As such, this Settlement is an outstanding result in terms of the significant benefits made available to the Settlement Class members. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-cv-3066, 2012 WL 12540344, at *5 (N.D. Ga. Oct. 26, 2012) (finding that a lodestar multiplier of 4 was appropriate and "reflect[ed] such considerations as (1) the contingent nature of the fee; (2) the risk of the case (i.e., the likelihood of success viewed at the time of the filing); (3) the quality of representation; and (4) the result achieved").

In sum, Class Counsel's base lodestar is appropriate and reasonable given the efforts expended, the results obtained, and the relief made available to the Settlement Class members. "In

the absence of a fee multiplier, highly qualified and experienced lawyers like Class Counsel would not be incentivized to take on risky, high-stakes, and complex litigation like this one, as there would be no way to mitigate the risk of not getting paid at all or, as in this case, working for many years without payment." Stiefel Decl. at ¶ 95. The risks taken in prosecuting this case over nearly 8½ years, coupled with the success obtained for the Settlement Class members, amply justify the modest multiplier requested. As such, the requested attorney's fee award is fair, reasonable, and justified.

Importantly, the reasonableness of the fee award sought is also supported by the twelve "*Johnson* factors" that courts within the Eleventh Circuit commonly look to under *Johnson v. Georgia Highway Expr., Inc.*, 488 F.2d 714 (5th Cir. 1974); *see Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991). The "*Johnson* factors" are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney; (5) the customary fee; (6) whether the fee is contingent; (7) the time limitations imposed; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I*, 946 F.2d at 772. Here, as explained below, each of these factors confirms the reasonableness of Class Counsel's requested fee award.

1. The time and labor required and preclusion from other work.

The first, fourth, and seventh *Johnson* factors relating to the time and labor Class Counsel have dedicated to the prosecution of these Actions, as well as the time they necessarily had to devote to the litigation to the exception of pursuing other matters, all support the reasonableness of the fee award requested.

As set forth further in Section III.B, below, and as attested to in the Declarations of Class Counsel attached hereto, Class Counsel have expended thousands of hours litigating this matter over the past 8 ½ years to achieve and preserve the Settlement. Throughout this litigation, which has proceeded in multiple forums, Class Counsel have conducted extensive investigations, briefed numerous dispositive motions, conducted multiple depositions, reviewed thousands of pages of document production, fully briefed two separate appeals to the Ninth Circuit, were successful in adversely certifying a class of affected individuals, and prosecuted a multi-year, multi-faceted appeal that resulted in significant changes to the underlying jurisprudence regarding TCPA cases. *See* McGuire Decl., at ¶¶ 12–13; Cox Decl., at ¶¶ 11–12; Underwood Decl., at ¶¶ 12–13; Bock Decl., at ¶ 13.

Critically, Class Counsel undertook these efforts without any guarantee of recovery and necessarily had to forego prosecution of other cases and pursuing other matters. *See* McGuire Decl., at ¶¶ 11, 16; Cox Decl., at ¶¶ 7 ,20; Bock Decl., at ¶ 7–8; *see Yates v. Mobile Cnty. Pers. Bd.*, 719 F.2d 1530, 1535 (11th Cir. 1983) ("The expenditure of 1,000 billable hours – and often in significant blocks of time – necessarily had some adverse impact upon the ability of counsel for plaintiff to accept other work, and this factor should raise the amount of the award"). In total, Class Counsel have spent over 9,112.1 hours in attorney time in litigating these Actions, amounting to a lodestar of $5.27 million. *See* McGuire Decl., at ¶¶ 20; Cox Decl., at ¶ 13; Underwood Decl., at ¶ 16; Bock Decl., at ¶ 10.

2. The litigation involved significant legal challenges that created a high risk that the Actions would not succeed and result in any payment to Class Counsel or Settlement Class members.

The second, sixth, and tenth *Johnson* factors also favor approval of the requested fee award. As noted above, the Actions that resulted in the Settlement Agreement ultimately achieved by

Class Counsel involved some highly complex legal issues. Specifically, during the entire pendency of the *Herrick*, *Bennett*, and *Drazen* Litigations, the question of whether the dialing technology used by GoDaddy to send the text messages and place the calls at issue constituted an ATDS under the TCPA was contested and subject to conflicting rulings. *See Glasser v. Hilton Grand Vacations Co., LLC*, 948 F.3d 1301 (11th Cir. 2020), *versus Marks v. Crunch San Diego, LLC*, 904 F.3d 1041 (9th Cir. 2018). Indeed, during the pendency of the Objectors' appeal, this very issue was resolved in *Facebook*. That is, without the efforts of Class Counsel to preserve the Class Settlement, the new interpretation of an ATDS under *Facebook* would be dispositive in this case, and without the relief provided by this Settlement, the Class would get nothing. As a result, had this Settlement not been reached when it was reached it, and had it not been subsequently protected by Class Counsel, the Settlement Class members would have no possibility of receiving any benefits whatsoever. *See* Rubenstein Decl., at ¶ 29.

Further, at the time Class Counsel undertook this matter, there existed a circuit split regarding whether certain TCPA violations constitute an injury-in-fact that confers Article III standing. *See, e.g., Salcedo v. Hanna*, 936 F.3d 1162 (11th Cir. 2019); *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037 (9th Cir. 2017). In fact, Class Counsel had to go so far as convincing the Eleventh Circuit to overturn its own *Salcedo* precedent in order to preserve the benefits provided to the Class under the Settlement. *See* Rubenstein Decl., at ¶ 30.

Additionally, the issue of whether the calls and text messages at issue constituted "advertising" or "telemarketing" also remained a threshold merits issue that was still to be ruled upon. Under FCC regulations passed in 2012, automated text messages and phone calls made for purposes of advertising require express written consent. *See In re Rules and Regulations Implementing Tel. Consumer Prot. Act of 1991*, 27 F.C.C. Rad. 1830, 1857 (February 15, 2012).

At trial, GoDaddy would have likely challenged the purpose behind the calls and text messages that were placed and argued that they were not made for advertising purposes. If the trier of fact determined that the calls did not constitute advertising or telemarketing, then express written consent would not be required. Rather, the TCPA would only require "express consent," which is a much lower threshold that GoDaddy could meet to defeat the claims at issue here.

The difficulty in litigating a case of this size in a changing legal landscape with class members scattered across the country and involving a defendant that is well capitalized and prepared to litigate any decision to appeal is why, despite over 1 million Settlement Class members receiving the calls and text messages at issue, only three lawsuits were ultimately brought against GoDaddy. This factor, along with the significant risk to achieving any recovery, combined with the already contingent nature of Class Counsel's involvement in this litigation, weighs heavily in favor of finding Class Counsel's requested award reasonable. *See Pinto*, 513 F. Supp. 2d at 1339 ("A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high"); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1364 (S.D. Fla. 2011) ("A contingency fee arrangement often justifies an increase in the award of attorney's fees"); *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-cv-61677, 2008 WL 649124, at *14 (S.D. Fla. Jan. 31, 2008) ("Attorneys' risk is perhaps the foremost factor in determining an appropriate fee award").

3. Class Counsel achieved an excellent result for the Settlement Class.

The eighth *Johnson* factor, the value provided to the Settlement Class through Class Counsel's efforts, is the centerpiece of any determination of a reasonable fee. *See Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1202 (S.D. Fla. 2006). Here, Class Counsel were able to negotiate a settlement that made $35 million in benefits available to the Settlement

Class (a result unthinkable today in light of *Facebook*). Further, the benefits being provided to the Settlement Class are well within the range of benefits provided by other TCPA settlements in this Circuit, and elsewhere throughout the country (prior to *Facebook*). *See, e.g.*, *Spillman v. RPM Pizza, Inc.*, No. 10-cv-349, 2013 WL 2286076, at *4 (M.D. La., June 17, 2011) (approving a settlement creating a $9.75 million fund for unauthorized automated calls, resulting in a settlement payment of approximately $15 per class member); *Los Santos v. Millward Brown, Inc.*, No. 13-cv-80670, 2015 WL 11438497 (S.D. Fla. Sept. 11, 2015) (approving a settlement creating a $11 million fund for unauthorized automated calls resulting in a settlement payment of $50 per class member); *Rose et al. v. Bank of America Corp*., No. 11-cv-02390 (N.D. Cal. 2014) (approving settlement creating a $32 million fund for unauthorized automated calls, resulting in a settlement payment of approximately $20–$40 per class member); *In re Jiffy Lube Int'l, Inc. Text Spam Litig.*, No. 11-MD-02261 (S.D. Cal. 2013) (approving settlement providing class members with $20 vouchers that could be redeemed for $15 cash); *Garcia v. Target Corp.*, No. 16-cv-02574, Dkt. 210 (D. Minn. Jan. 27, 2020) (approving a settlement creating a $7.05 million fund for unauthorized automated calls providing for a settlement payment of $70 per class member); *Williams v. Bluestem Brands, Inc.*, No. 17-cv-1971, 2019 WL 1450090, at *2 (M.D. Fla. Apr. 2, 2019) (approving TCPA settlement resulting in approximately $25–$75 per claimant). Accordingly, this factor also weighs heavily in favor of finding the requested fee award reasonable.

4. The requested attorney's fees are consistent with the fee awards in other TCPA cases.

The fifth and twelfth *Johnson* factors are also satisfied here, as the fee award requested by Class Counsel is consistent with fee awards approved by numerous other courts in TCPA class actions across the country, including in this Circuit. Although Class Counsel are requesting their fee pursuant to CAFA's lodestar provision, a cross-check analysis of fees awarded in other similar

cases shows the reasonableness of the fee being sought here. As the Eleventh Circuit in *Camden I* noted, typical fee awards in this Circuit range from 20% to 50% of the total benefits made available, with most awards falling between 20% and 30%. *Camden I*, 946 F.2d at 774; *see also David v. American Suzuki Motor Corp.*, No. 08-cv-22278, 2010 WL 1628362, at *8 n. 15 (S.D. Fla. 2010) (noting that a customary fee award is "20%–50% of the common fund's value"). Class Counsel's fee request amounts to just 30% of the total benefits made available. Indeed, numerous courts have approved similar such fee awards. *See, e.g., James v. JPMorgan Chase Bank, N.A.*, No. 15-cv-2424, 2017 WL 2472499, at *2 (M.D. Fla. 2017) (awarding attorney's fees amounting to 30% of the settlement fund where class counsel "litigat[ed] a large class action" brought under the TCPA); *Gonzalez v. TCR Sports Broad. Holding, LLP*, No. 18-cv-20048, 2019 WL 2249941, at *6 (S.D. Fla. 2019) (collecting authorities and noting "district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund"); *Schwyhart v. AmSher Collection Servs., Inc.*, No. 15-cv-01175, 2017 WL 1034201, at *3 (N.D. Ala. 2017) (finding award of attorney's fees of "one-third of the Settlement Fund" to be "fair and reasonable" in TCPA class action); *Markos v. Wells Fargo Bank, N.A.*, No. 15-cv-01156, 2017 WL 416425, at *3 (N.D. Ga. Jan. 30, 2017) (awarding $4.9 million, or 30% of settlement fund, in TCPA class action); *Youngman v. A&B Ins. & Fin., Inc.*, No. 16-cv-01478, Dkt. No. 70 (M.D. Fla. July 31, 2018) (awarding a fee of 33 1/3% in TCPA class action); *Soto v. The Gallup Org.*, No. 13-cv-61747, Dkt. No. 95 (S.D. Fla. Nov. 24, 2015) (awarding 33 1/3% in TCPA class action action); *Guarisma v. ADCAHB Med. Coverages, Inc.*, No. 13-cv-21016, Dkt. No. 95 (S.D. Fla. June 24, 2015) (same); *Vergara et al. v. Uber Technologies, Inc.*, No. 15-cv-06942, Dkt. No. 112 (N.D. Ill. March 1, 2018) (awarding attorney's fees and costs of 32.5% of $20 million common fund in TCPA class action); *Hanley v. Tampa Bay Sports & Entertainment*, No. 19-cv-00550, Dkt. 94 (M.D. Fla. April 23,

2020) (awarding 35% of a reverting settlement fund in TCPA class action). As such, Class Counsel request a fee of 31.68% of the non-voucher benefits made available for distribution to the Class ($33,140,600) is well within the customary fee award range and is well supported by numerous other fee requests approved by courts in this District and the Eleventh Circuit generally.

5. Litigation of the Actions and achieving the settlement benefits made available to the Settlement Class required skilled and experienced Class Counsel.

The remaining *Johnson* factors – the skill requisite to perform the legal service properly and the experience, reputation and ability of the attorneys – are also satisfied here. Class Counsel are leaders in class action litigation with dozens of successfully litigated cases and numerous class counsel appointments resulting in hundreds of millions of dollars in settlement benefits provided to consumers. *See* McGuire Decl., at ¶¶ 4–5; Cox Decl., at ¶¶ 3, 5; Underwood Decl., at ¶¶ 7–9; Bock Decl., firm resume attached thereto. There is no question that the settlement benefits ultimately achieved here were directly a result of the skills brought to bear by Class Counsel. The Settlement Agreement reached here was a result of years of hard-fought litigation against a well-capitalized defendant and involved complex litigation of class certification, ATDS, and jurisdictional issues, two separate appeals to the Ninth Circuit, and years of appellate proceedings before the Eleventh Circuit.

Additionally, Class Counsel have successfully preserved the Settlement for the benefit of the Class in the face of drastically changing legal precedents. Thanks to Class Counsel's decades of combined experience litigating similar such complex cases – including scores of TCPA class actions, and including litigation in courts of appeals and at the U.S. Supreme Court – they were able to overcome the numerous and significant defenses presented by GoDaddy and Objector Pinto in order to obtain and preserve the benefits made available to the Class through the Settlement.

6. Out of 1.26 million class members there was just a single objection and virtually no exclusions.

In addition to all of the *Johnson* factors supporting the requested fee award, it is also noteworthy that, even though Notice was sent to over 1.26 million class members, only Pinto pursued an objection and only eleven requests for exclusion were received. *See* Declaration of Kari Grabowski, Dkt. 69-3, at ¶¶ 22, 23. The overwhelmingly positive response to the Settlement from the Settlement Class members is not surprising given the significant amount of relief provided. Furthermore, given that the Notice specifically explained that Class Counsel would be seeking a fee award amounting to 30% of the benefits being made available, the lack of exclusions and the singular objection – including specifically to the fee award requested here – attests to the Settlement Class's approval of Class Counsel's efforts and the fairness of the compensation sought.

7. The requested fee award was negotiated by the Parties at arm's-length and only after reaching agreement on the material terms of the Settlement.

Finally, the requested fee award is not only reasonable and justified, it is the product of contentious, arm's-length negotiations assisted by a retired federal judge. The Settlement Agreement provides that Class Counsel may petition for a fee award of up to $10,500,000, in addition to reimbursement of the litigation costs and expenses incurred in this Action. Ex. A, ¶ 77. The Parties negotiated these attorney's fees, costs and expenses only after reaching agreement on all the material terms of the Settlement and as part of the same contentious and arm's-length negotiations. As such, the Settlement Agreement should be entitled to significant weight in determining the fairness of the fee award sought. *See In re Liberty Nat'l Ins. Cases*, No. 02-cv-2741, 2006 WL 8436814, at *22 (N.D. Ala. Mar. 31, 2006) ("In the absence of any evidence of collusion or detriment to the class, this Court will give substantial weight to a negotiated fee

amount, assuming that it represents the parties' 'best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney's fees'") (quoting *Elkins v. Equitable Life Ins. Co.*, No. 96-cv-296, 1998 WL 133741, at *34 (M.D. Fla. Jan. 27, 1998)).

As the above analysis makes clear, the requested fee award is reasonable and well-supported given the extraordinary amount of settlement benefits Class Counsel were able to negotiate for the Settlement Class in light of the significant challenges presented by GoDaddy, Pinto, and the real risk of having Plaintiffs' and the Class Members' claims dismissed altogether under *Salcedo* or *Facebook*.

C. The Court Should Approve Class Counsel's Request for Reimbursement of Out-Of-Pocket Litigation and Mediation Costs and Expenses.

Class Counsel have expended $493,908.67 in reimbursable expenses related to filing fees, travel expenditures, expert witness fees, copying, mediation fees, and case administration, with the potential of more expenses yet to come. Cox Decl., at ¶ 23; Underwood Decl., at ¶ 17; McGuire Decl., at ¶ 22; Bock Decl., at ¶ 14. Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See Waters*, 190 F.3d at 1298 ("plaintiffs' attorneys are entitled to reimbursement of those reasonable and necessary out-of-pocket expenses incurred in the course of activities that benefitted the class") (internal citations omitted). Class Counsel's expenses here were all reasonably incurred in pursuing this litigation. McGuire Decl., at ¶ 22; Cox Decl., at ¶ 23; Underwood Decl., at ¶ 17; Bock Decl., at ¶ 14.

Class Counsel have reviewed the expense records carefully and determined that the expenses were necessary to the successful prosecution of this litigation. These expenses were necessary to prosecute litigation of this size and complexity on behalf of the Settlement Class, and they are typical of expenses regularly awarded in large-scale class actions. Therefore, Class Counsel request the Court approve as reasonable the incurred expenses, a request which Defendant

does not oppose. Accordingly, this Court should award Class Counsel $493,908.67 in costs and expenses incurred in prosecution of this litigation.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order: (i) approving and awarding attorney's fees of $10,500,000; and (ii) approving and awarding reimbursement of costs and expenses totaling $493,908.67.

Dated: October 18, 2024

Respectfully submitted,

/s/ John R. Cox
JOHN R. COX

One of the Attorneys for Plaintiffs and Class Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2024, I electronically filed the foregoing *Plaintiffs' Motion and Memorandum in Support of Renewed Award of Attorney's Fees, Costs, and Expenses* with the Clerk of the Court using the CM/ECF system. A copy of said document will be electronically transmitted to all counsel of record.

/s/ John R. Cox
John R. Cox, Esq.