UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 1:15-cv-21264-MGC

JUSTIN MARK BOISE, individually and on behalf of all those similarly situated,

Plaintiff,

v.

ACE AMERICAN INSURANCE COMPANY and ACE USA, INC.,

DefendantS.

OBJECTION OF FREDDIE GLOVER

INTRODUCTION

This TCPA class action involves illegal calls made to individuals on the National Do Not Call Registry, and offers a $9.7 million non-reversionary common fund to be paid by Ace American Insurance Company and ACE USA, Inc. (hereinafter "Ace"). Once administration costs and class counsels' proposed fees are deducted, $6.3 million will remain for nearly one million class members.[1]

Cass counsel tout this as "an excellent" recovery, but it is just 1% of the aggregate potential class damages ($491 million) considering the 983,527 class members and the fact that the minimum statutory penalty under the TCPA is $500 per violation.[2] 47 U.S.C. §227(b)(3). If the possibility of treble damages is considered (allowing for $1,500 per violation), the $6.3 million is just a fraction of 1% in light of the $1.4 billion in potential damages.[3]

$6.3 million in this context is on the low end of adequacy. It provides no basis for this Court to award anything above the benchmark, which is 25%, something omitted from class counsels' motion). In fact, because the benchmark is even lower in TCPA cases, a fee below 25% would be proper. To be certain, the proposed 30% is excessive.

Further, given this relatively brief litigation (the case was on file around one year and eight months before settling),[4] class counsel should have (but did not) disclose the number of hours required to achieve the settlement. This Court should order this material produced for it to conduct a lodestar cross-check.

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[1] Motion for Attorneys' Fees, ECF Doc. 84, at p. 5 of the motion, n.3.

[2] 983,527 x $500 = $491,763,500. $6.3 million is 1.3% of $491 million.

[3] *Id.* at p. 5 of the motion (noting there are 983,527 members). 983,527 x $1,500 = $1,475,290,500.

[4] The class action was filed on April 1, 2015 and settled around one year and eight months later on December 20, 2016. Complaint, ECF Doc. 1; Notice of Settlement, ECF Doc. 69.

Because every dollar awarded in attorneys' fees is a dollar taken from the class, this Court should exercise is fiduciary duty to protect the absent class members, whose interests are in conflict with class counsel at this stage, and reject class counsels' excessive $2.9 million fee request.

STANDING AND PROCEDURES TO OBJECT

Objector's full name, address, telephone number, are as follows: Freddie L. Glover; 11 Lake Street, East Orange, New Jersey, 07017; 973-752-8518.

Objector is a person in the United States and is or was a customer of Nationstar Mortgage or BB&T Bank, on or after October 16, 2013, and (1) received more than one telephone call made by or on behalf of ACE within a 12-month period; (2) to a telephone number that had been registered with the National Do Not Call Registry for at least 30 days. He is thus a member of the class as defined by the Class Notice. *See* Declaration of Freddie L. Glover, **Exhibit "1"** hereto, incorporated by reference as though set forth in full. Objector also received a Class Notice and filed a claim, a true and correct copy of which is attached hereto as **Exhibit "1-A."** As such, Objector has standing to make his objection.

Objector is represented by local counsel, Jeff M. Brown of Lavalle, Brown & Ronan, P.A., contact information below. Objector is also represented by Christopher Bandas, Bandas Law Firm, PC, as his general counsel in objecting to the settlement. Mr. Bandas's address is 500 North Shoreline Blvd., Suite 1020, Corpus Christi, Texas 78401. His email address is cbandas@bandaslawfirm.com. His phone number is (361) 698-5200. Mr. Bandas does not presently intend on making an appearance for himself or his firm.

Mr. Glover objects to the proposed settlement and attorneys' fee request in *Justin Mark Boise v. ACE American Insurance Company*, Case No. 1:15-cv-21264-MGC, for the reasons

stated herein. This objection is filed for the purpose of improving the settlement for the benefit of the class members. Objector does not intend on appearing at the fairness hearing either in person or through counsel but ask that his objection be submitted on the papers for ruling at that time. Objector relies upon the documents contained in the Court's file in support of these objections. Objector incorporates by reference the arguments and authorities contained in other filed objections, if any, made in opposition to the fairness, reasonableness and adequacy of the proposed settlement, the adequacy of class counsel and to the proposed award of attorneys' fees and expenses that are not inconsistent with this objection.

OBJECTIONS

I. Class Counsels' Proposed Fee Exceeds the Eleventh Circuit Benchmark.

Nowhere to be found in class counsels' motion is that their 30% fee request exceeds the 25% benchmark recognized in this District and in the Eleventh Circuit. *Allapattah Servs., Inc. v. Exxon Corp*., 454 F.Supp.2d 1185, 1201 (S.D. Fla. 2006) ("noting the bench mark percentage is 25%"); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1336 (S.D. Fla. 2001) (referencing "the circuit's 25% benchmark"); *see also Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1243 (11th Cir. 2011) ("well-settled law from this court [provides] that 25% is generally recognized as a reasonable fee in common fund cases).

"*Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991) . . . established that attorneys' fees should be a reasonable percentage of a common fund . . ., and set a 25% recovery as an appropriate 'benchmark.'" *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001) (emphasis added); *see also Carpenters Health & Welfare Fund v. Coca-Cola Co.*, 587 F. Supp. 2d 1266, 1269 (N.D. Ga. Nov. 7, 2008) (while "district courts usually award between 20% and 30% of the common fund . . . , 25% is "bench mark' percentage fee award which may be adjusted in accordance with the individual circumstances of each case")(quoting

Camden I, 946 F.2d at 775). The "25% . . . 'bench mark' percentage fee award . . . may be adjusted in accordance with the individual circumstances of each case[.]" *Pedraza v. United Guar. Corp.*, CV100-108, 2001 WL 37071199, at *6 (S.D. Ga. June 22, 2001) (quoting *Camden I Condominium Ass'n*, 946 F.2d at 775).

The circumstances in this straightforward TCPA settlement, which was settled relatively quickly, *do not* warrant an adjustment upward from 25%.

A. Class Counsels' Request for an Excessive Amount Invokes this Court's Fiduciary Obligation on Behalf of the Absent Class Members.

This Court has a fiduciary obligation to protect the interests of the absentee Class members, including the responsibility to limit attorneys' fees to a reasonable amount. *Sharleigh Assoc. LLC v. Windmere-Durable Holdings, Inc.*,184 F.R.D. 688, 693 (S.D. Fla. 1999) ("[t]he court bears fiduciary responsibilities to the class. Under Fed. R. Civ. P. 23(d), the court may make appropriate orders 'for the protection of the members of the class.' In light of the undeniable non-involvement of the plaintiffs themselves on the matter of class counsel fees or indeed any other aspect of the litigation, this opportunity becomes the obligation of the court") (quoting *In re Oracle Sec. Litig.*,131 F.R.D. 688, at 693 (N.D. Cal.), *modified*, 132 F.R.D. 538 (N.D. Cal. 1990)).

"[B]ecause the fee in this case will derive from the plaintiff class's settlement fund, and the defendants, therefore, no longer possess an economic interest in the determination of the fee, the court must act as a fiduciary for class members and must be especially careful to scrutinize every factor relevant to determining the size of a reasonable attorney's fee." *Bowen v. SouthTrust Bank of Alabama*, 760 F. Supp. 889, 896–97 (M.D. Ala. 1991) (quoting *Parker v. Anderson*, 667 F.2d 1204, 1214 (5th Cir.), *cert. denied*, *897 459 U.S. 828, 103 S.Ct. 63, 74 L.Ed.2d 65 (1982); Report of the Third Circuit Task Force, Court Awarded Attorney Fees, 108 F.R.D. 237, 255

(1985)). "Judicial scrutiny of class action fee awards and class settlements more generally is based on the assumption that class counsel behave as economically rational actors who seek to serve their own interests first and foremost." *In re Southwest Voucher Litigation*, 799 F.3d 701, 712 (7th Cir. 2015); *see also In re: Mercury Interactive Corp. Securities Litigation*, 618 F.3d 988 (9th Cir. 2010) ("the relationship between plaintiffs and their attorneys turns adversarial at the fee-setting stage").

B. 30% is Excessive for this Straightforward TCPA Settlement.

This Court should exercise its fiduciary duty on behalf of the absent class members, carefully scrutinize each factor relevant to class counsels' fees, and reject the excessive fee request here.

Class counsel are mistaken—a 30% is *not* within the norm for fees in TCPA settlements. While there are outliers, the "data available on past awards in TCPA cases and other class actions show[s] that the median fee for large TCPA class actions were between 20% and 24% of the settlement fund[.]" *Wilkins v. HSBC Bank Nevada, N.A.*, 14 C 190, 2015 WL 890566, at *10 (N.D. Ill. Feb. 27, 2015) (citing *In re Capital One Tel. Consumer Prot. Act Lit.*, No. 12 C 10064, 2015 WL 605203, at *11-12, 15 (N.D. Ill. Feb. 12, 2015)).

In recent TCPA cases, courts have commonly awarded a percentage of around 20%, and sometimes less, to class counsel. *See e.g., Gehrich v. Chase Bank USA, N.A.*, No. 12 C5510, 2016 WL 806549 (N.D. Ill. Mar. 3, 2016) (awarding class counsel 21% of the common fund); *Bayat* v. *Bank of the West*, 2015 WL 1744342, at *10 & n.10 (N.D. Cal. Apr. 15, 2015) (opting for the lodestar method but awarding the equivalent of 13.5% of the over $3.3 million settlement fund); *Wilkins* v. *HSBC Bank Nev., N.A.*, 2015 WL 890566, at *12 (N.D. Ill. Feb. 27, 2015) (awarding 23.75% of the almost $40 million fund); *Rose* v. *Bank of Am. Corp.*, 2014 WL 4273358, at *5, *13 (N.D. Cal. Aug. 29, 2014) (choosing the lodestar method and awarding a fee

that constituted about 7.5% of the over $32 million fund); *Michel* v. *WM Healthcare Solutions, Inc.*, 2014 WL 497031, at *23 (S.D. Ohio Feb. 7, 2014) (awarding 15% of the $4.3 million settlement fund); *Malta v. Fed. Home Loan Mortgage Corp.*, 10-CV-1290-BEN-NLS, 2013 WL 12095060, at *1 (S.D. Cal. June 21, 2013) (22.5%); *Arthur* v. *Sallie Mae, Inc.*, 2012 WL 4076119, at *2 (W.D. Wash. Sept. 17, 2012) (awarding 20% of the about $24 million fund).[5]

Class counsel cite *Soto* and *Guarisma* from this District to support their claim for 30%. Yet, *Guarisma v. ADCAHBMed. Coverages, Inc.*, No. 13-cv-21016, Dkt. No. 95 (S.D. Fla. June 24, 2015) offers no analysis whatsoever, and it is not clear from the order that the fees were even disputed. Meanwhile, *Soto v. The Gallup Org.*, No. 13-cv-61747, Dkt. No. 95 (S.D.Fla. Nov. 24, 2015) relied on *Guarisma* for the notion that the one-third fee was consistent with similar TCPA settlements. These unpublished orders are outliers,[6] not guides for appropriate recovery.

[5] Cases cited by class counsel outside the TCPA context should be given no deference in setting the percentage of the fund recovery here.

[6] Class counsel also cite opinions from outside the Eleventh Circuit with exceptional facts justifying an award above the benchmark. *See* Motion for Attorneys' Fees, ECF Doc. 84, at p. 11 of the motion, n.4. For example, in *Hageman v. AT&T Mobility LLC, et al.*, 1:13-cv-50, Dkt. No. 68 (D. Mont. Feb. 11, 2015), the district court awarded class counsel 33%, inclusive of costs. That settlement, however, purportedly resulted in the largest recovery per class member in the 25 year history of the TCPA. ECF Doc. 68, at 8-9. Likewise, the district court in *Ikuseghan v. Multicare Health Sys.*, No. C14-5539, 2016 WL 4363198, at *2 (W.D. Wash.Aug. 16, 2016), awarded 30%, plus costs when class counsel secured "an extraordinarily good result for the class." The class members received them amount they would had they successfully litigated their claims under the TCPA ($500 per call). *Id*. at *1-2. The court in *Ikuseghan* noted that "[t]his recovery is significantly superior to other TCPA class action settlements that have been approved in this Circuit and justifies an upward departure from the 25% benchmark rate." *Id*. Similarly, in *Vendervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1209-10 (C.D. Cal. 2014), a 33% was justified where class counsel "achieved certification of the first federal TCPA class covering recipients of faxes that lacked compliant opt-out notices, regardless of whether the fax advertisements were solicited or unsolicited, and regardless of whether the defendant had an established business relationship with the persons to whom it sent the fax advertisements."

C. The *Johnson* Factors do Not Support an Upward Adjustment from the Benchmark.

Consideration of the relevant factors here does not support anything above 20- 25%. *See JWD Auto., Inc. v. DJM Advisory Group, LLC*, No. 2:15-cv-793, 2017 WL 2875679 (M.D. Fla.) (noting the Eleventh Circuit recognizes the "20-25% benchmark" as "presumptively reasonable"). In determining whether an upward adjustment from the benchmark is appropriate, courts consider the *Johnson* factors: (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 due to acceptance of the case," (5) "the customary fee," (6) "whether the fee is fixed or contingent," (7) "time limitations imposed by the client or other circumstances," (8) "the amount involved and the 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." *Carpenters Health*, 587 F. Supp. 2d at 1269 n.1 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–20 (5th Cir.1974)); *see also Camden I Condo. Ass'n*, 946 F.2d at 772 n.3, 776.

The most important factor is the amount involved and the results obtained. The result obtained here--$9.7 million—is a run of the mill settlement for a TCPA class action. Many TCPA settlements have achieved far greater results, with class counsel receiving less. *Rose* v. *Bank of Am. Corp.*, 2014 WL 4273358, at *5, *13 (N.D. Cal. Aug. 29, 2014) ($32 million fund; awarding attorneys' fees via lodestar method that amounted to approximately 7.5%); *Wilkins* v. *HSBC Bank Nev., N.A.*, 2015 WL 890566, at *12 (N.D. Ill. Feb. 27, 2015) ($40 million fund; awarding 23.75%); *Arthur* v. *Sallie Mae, Inc.*, 2012 WL 4076119, at *2 (W.D. Wash. Sept. 17, 2012) ($24 million fund; awarding 20% attorneys' fees); *Gehrich*, 316 F.R.D. at 237-38 ($34

million common fund; 21% attorneys' fees); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 808 (N.D. Ill. 2015) ($75 million fund; awarding 20.77% fees); *Duke v. Bank of Am., N.A.*, No. 5:12-cv-04009, ECF Doc. 59 (N.D. Cal.) ($32 million fund, awarding 7.5% attorneys' fees).

Relative to the $491 million potential aggregate damages released (without considering the possibility of treble damages), $9.7 million, and particularly the actual $6.3 million recovery, is modest at best. Again, it amounts to a 1% recovery.[7] In a similar case, a district court remarked that the class recovery under the TCPA settlement "represents a whopping 99.5% discount from the theoretical verdict value were statutory damages to be awarded to the entire class. This cannot be credibly called an 'outstanding' result." *Bayat v. Bank of the W.*, C-13-2376 EMC, 2015 WL 1744342, at *5 (N.D. Cal. Apr. 15, 2015).

The $95 per-claimant estimated recovery is also not exceptional. *See e.g., Rinky Dink, Inc., v. World Business Lenders, LLC*, No. C14-0268, 2016 WL 3087073, at *3 (W.D. Wa. May 31, 2016) (awarding 25% in fees where the class members would receive $150); *Bayat v. Bank of the W.*, C-13-2376 EMC, 2015 WL 1744342, at *5 (N.D. Cal. Apr. 15, 2015) ($151 per-claimant recovery); *Wilkins v. HSBC Bank Nevada, N.A.*, 14 C 190, 2015 WL 890566, at *6 (N.D. Ill. Feb. 27, 2015) ($93.22 per-claimant recovery); *Michel v. WM Healthcare Solutions, Inc.*, 2014 WL 497031 (S.D. Ohio Feb. 7, 2014) ($190 per-claimant recovery). Meanwhile, there do not appear to be any practice changes offered in the settlement that would discourage Ace from committing similar TCPA violations in the future.[8]

Other factors also weigh strongly against an upward adjustment. The case did not demand particularly complex work, and delivered little social benefit, particularly in the absence of

[7] $6,370,285.74 is 1.3% of the $491,763,500 potential damages.

[8] Settlement Agreement, ECF Doc. 71-1.

practice changes. This is not an environmental, products liability, antitrust, or civil rights class action where liability may be difficult to prove and there is real societal value to pursuing the claim. *See, e.g., In re Genetically Modified Rice Litig.*, 764 F.3d at 873 (affirming district court's award of large attorneys' fee in part due to the "novel and complex issues of law" involved in lawsuit concerning contamination by makers of genetically modified rice); *In re Monosodium Glutamate Antitrust Litig.*, 2003 WL 297276, at *2 (D. Minn. 2003) (considering complex antitrust issues and highly uncooperative foreign defendants in awarding a substantial attorneys' fee).

Class counsel have not disclosed the amount of labor they expended in the case (which this Court should require), but the lawsuit settled relatively quickly (around one year and eight months after filing). And despite the hyperbole, class counsel took limited risk. The TCPA is a strict liability statute. A single text message results in recovery between $500 and $1,500. See 47 U.S.C. §227(b)(3). That fact makes TCPA class actions very likely to settle. *See, e.g., Rose* v. *Bank of Am. Corp.*, 2014 WL 4273358, at *12 (N.D. Cal. Aug. 29, 2014) (reducing requested attorneys' fee award and noting "because the TCPA has the potential of ruinous financial liability . . . defendants will almost always settle if there is any merit at all to the case"); *Bayat*, 2015 WL 1744342, at *9 (noting that there is less risk in a TCPA case "where the potential recovery of statutory damages is as large as it is here . . . due solely to the size of the class and damages fixed by statute"); *see also Gehrich*, 316 F.R.D. at 237 ("this case settled contemporaneously with or after several recent cases in this District and elsewhere that had established a template for TCPA litigation against large financial institutions, vastly reducing the uncertainty and risk for Class Counsel") (citations omitted).

Of course there is risk in all litigation, but the defenses outlined—including a challenge to standing, a dispute that the violations were intentional, and an opposition to class certification and ascertainability—are anything but unique to this TCPA action. *See e.g., Wilkins v. HSBC Bank Nevada, N.A.*, 14 C 190, 2015 WL 890566, at *11(N.D. Ill. Feb. 27, 2015) (noting defenses included "the class members' alleged consent to receive automated phone calls; Rule 23 manageability issues; and potentially forthcoming FCC orders"); *see also Aboudi v. T-Mobile USA, Inc.*, No. 12cv2169, 2015 WL 4923602, at *4, (awarding 25% attorneys' fees in a case involving issue of class certification and argument that the class was not ascertainable). The *Spokeo v. Robins* standing issue was one faced by plaintiffs' attorneys in TCPA actions across the country. *See e.g., Gehrich*, 316 F.R.D. at 229, 238-39 (awarding 21% in a case involving similar risks, including *Spokeo* standing question and the appeal of the FCC ruling).

In *Wilkins*, a TCPA settlement which provided a far greater $39.9 million fund, the court remarked, "this case is an average TCPA class action. There are serious obstacles for Plaintiffs to overcome in establishing liability, but they are typical obstacles faced by most TCPA plaintiffs." *Id*. (concluding that the risk of TCPA litigation did not warrant exceeding the scale). As in *Wilkins*, the defenses, obstacles, and risks here do not warrant going above the norm for fees in TCPA settlements.

Ultimately, whatever percentage used to calculate fees, Objector urges that it should be calculated after reduction of costs of administration, and not before. *See e.g., Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014) ("[T]he ratio that is relevant to assessing the reasonableness of attorneys' fees that the parties agreed to is the ratio of (1) the fee to (2) the fee plus what the class members received"). Regardless, class counsels' request for 30% of the gross settlement fund departs from the interests of the class and should not be granted.

Additionally, Mr. Glover urges that this Court not take the apparent low number of objections to class counsels' fee request as tacit approval. As has been frequently noted, silence in this context is more a product of apathy than acquiescence.

"[W]hile some courts have held that 'silence constitutes tacit consent to the agreement,' 'a combination of observations about the practical realities of class actions has led a number of courts to be considerably more cautious about inferring support from a small number of objectors to a sophisticated settlement.'" *Banks v. Nissan N. Am., Inc.*, 11-CV-2022-PJH, 2015 WL 7710297, at *10 (N.D. Cal. Nov. 30, 2015); *see also In re General Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995) (class members' "[a]cquiescence to a bad deal is something quite different than affirmative support").

"Silence may be a function of ignorance about the settlement terms or may reflect an insufficient amount of time to object. But most likely, silence is a rational response to any proposed settlement even if that settlement is inadequate. For individual class members, objecting does not appear to be cost beneficial. Objecting entails costs, and the stakes for individual class members are often low." Christopher R. Leslie, *The Significance of Silence: Collective Action Problems and Class Action Settlements*, 59 FLA. L. REV. 71, 73 (2007).

II. This Court Should Perform a Lodestar Cross-Check; No Multiplier is Appropriate.

Class counsel did not submit their lodestar information. Although not mandated, this Court in its discretion and in furtherance of its fiduciary obligations on behalf of the class should order class counsel to submit their billing so the Court can conduct a lodestar cross-check in light of the limited time (approximately 1 year and 8 months) in which this case has been on file and the substantial $2.9 million fee request. *See e.g., Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 696 (N.D. Ga. 2001) (cross-checking a percentage-based award with class counsels' lodestar

information); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1336 (S.D. Fla. 2001) (in finding "no reason to depart upward or downward from the circuit's 25% benchmark[,]" the court conducted a lodestar cross-check to confirm reasonableness of the fee request)

Without access to class counsels' lodestar, Mr. Glover asserts that anything above a 1.0 multiplier would be a windfall here. As the United States Supreme Court has explained there is "a 'strong presumption' that the lodestar represents the 'reasonable' fee, . . . and have placed upon the fee applicant who seeks more than that the burden of showing that such an adjustment is *necessary* to the determination of a reasonable fee." *City of Burlington v. Dague,* 505 U.S. 557, 562 (1992) (emphasis original) (quotations omitted). A"lodestar figure includes most, if not all, of the relevant factors constituting a 'reasonable attorney's fee.'" *Perdue v. Kenny A.,* 559 U.S. 542, 552 (2010). "[A]n enhancement may not be awarded on a factor that is subsumed in the lodestar calculation." *Id*. at 553.

There is simply nothing extraordinary about this $9.7 million TCPA settlement that would support an adjustment above class counsels' lodestar.

III. This Court Should Judicially Supervise Allocation of Attorneys' Fees.

According to the fee motion, at least two firms represent plaintiffs in this matter.[9] Yet there is no mention in class counsels' fee motion (or the class notice) on how fees will be divided. This implicates serious due process concerns for the class.

Although the Eleventh Circuit has apparently not reached the issue, several federal courts have observed that in "a class action settlement, the district court has an independent duty . . . to the class and the public to ensure that attorneys' fees are reasonable and divided up fairly among plaintiffs' counsel." *See In re High Sulfur Content Gasoline Prods. Litig.* (5th Cir. 2008) 517

[9] ECF Doc. 84, at p. 19 of motion (listing Hughes Ellzey, LLP and Crumley & Wolfe, PA).

F.3d 220, 227–28 ; *In re "Agent Orange" Prods. Liab. Litig.* (2d Cir. 1987) 818 F.2d 216, 223. The district court "must not … delegate that duty to the parties." *High Sulfur*, 517 F.3d at 228 (internal quotation omitted).

This Court's judicial supervision should not end with a lump sum payment in fees. The Court should oversee the allocation of funds. It should not simply trust that Class Counsel will do so fairly. While "lead counsel may be in a better position . . . to evaluate the contributions of all counsel seeking recovery of fees[,]" the allocation should be supervised by the court in light of inherent conflicts among the attorneys. (*Id.* at 234-35 [citing *In re Diet Drugs Prods. Liab. Litig.* (3d Cir. 2005) 401 F.3d 143, 173 (Ambro, J., concurring)]) ("They make recommendations on their own fees and thus have a financial interest in the outcome. How much deference is due the fox who recommends how to divvy up the chickens?'").

To be certain, class members have an interest in the manner in which their common fund is distributed. *See Stetson v. Grissom*, 821 F.3d 1157, 1163 (9th Cir. 2016) ("in a class action, an objector need not establish standing to object to an award of attorney's fees by the district court"); *In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327, 337 (D.N.J. 2002) ("[i]In common fund cases, the fees paid to counsel come directly out of the recovery available to the interested parties, so that every dollar paid to counsel results in one less dollar for the plaintiffs"); *see also Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012) ("in addition to asking 'whether the *class settlement*, taken as a whole, is fair, reasonable, and adequate to all concerned,' we must also determine 'whether the *distribution* of the approved class settlement complies with our standards governing *cy pres* awards'") (emphasis original). Class members have a direct interest in ensuring that those who are not deserving, not be provided a windfall on their behalf; and conversely, that those who provided exceptional representation be compensated

accordingly.

CONCLUSION

Objector Freddie Glover requests the Court reject the excessive 30% fee request for their efforts in securing what is, at best, a marginally adequate $9.7 million TCPA settlement. The Court should award between 20% and 25%, consistent with the benchmark in this Circuit, and in the context of TCPA litigation particularly. Mr. Glover further requests that the Court order class counsel to submit their lodestar information so that a cross-check can be conducted, and "the time and labor" *Johnson* factor can be appropriately addressed.

Mr. Glover urges that the excess from the reduced fee should be returned to the class members, the rightful settlement beneficiaries. Finally, Mr. Glover urges that this Court decline to award a lump sum attorneys' fee, and instead judicially allocate any fee award.

DATED: August 24, 2017

Respectfully submitted,

By: ____/s/ Jeff M. Brown_____
Jeff M. Brown, Esq.
Florida Bar #197912
Attorney for Objector Gabriella Canales

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **24th day of August,** I electronically filed the foregoing document with the Clerk of the Court using CM/EFC. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing. The undersigned further certifies he caused to be served via USPS First Class Mail, postage prepaid, a copy of this Objection and associated exhibits upon all parties identified on the attached Service List.

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SERVICE LIST

Case Name *Justin Mark Boise v. ACE American Insurance Company and ACE USA, Inc.*, No. 1:15-cv-21264-MGC (S.D. Fla.).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No.: **1:15-cv-21264-MGC**

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