

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WILLIAM QUINN, individually, and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,)	Case No.: 1:23-cv-00447
)	
v.)	Hon. Gabriel Fuentes
)	
JK BUICK GMC, INC. d/b/a BILL KAY)	
AUTO GROUP,)	
)	
Defendant.)	
)	
)	

**PLAINTIFF’S UNOPPOSED MOTION AND MEMORANDUM OF LAW IN SUPPORT
OF PRELIMINARY APPROVAL OF CLASS SETTLEMENT, CERTIFICATION OF
SETTLEMENT CLASS, AND SCHEDULING A FINAL APPROVAL HEARING**

I. INTRODUCTION

The Settlement Agreement reached between Plaintiff William Quinn and (“Plaintiff”), on behalf of himself and the proposed settlement class, and Defendant JK Buick GMC, Inc. (“Defendant”) is filed concurrently with this submission as Exhibit 1.

Plaintiff respectfully submits this unopposed¹ motion seeking the Court’s preliminary approval of this settlement under FED. R. CIV. P. 23(e) so that notice of the settlement can be disseminated to the Settlement Class and the Final Approval Hearing scheduled. At the Final Approval Hearing, the Court will have additional submissions in support of the settlement, as well as any objections that may be filed, and will be asked to determine whether, in accordance with FED. R. CIV. P. 23(e)(2) the settlement “is fair, reasonable, adequate, and in the best interests of [Settlement] Class Members.” *McDaniel v. Quest Commc’ns Corp.*, 2011 WL 13257337, at *2 (N.D. Ill. Aug. 29, 2011).

The proposed settlement here is made on behalf of a class of 54 persons who received text messages from Defendant after requesting to no longer receive such messages. All settlement class members who do not opt out of the settlement will each receive approximately \$1,300.00. Settlement Agreement (“SA”) Sections 3 and 7, SA Exhibits 1-3; Ex. 2, Declaration of Christopher E. Roberts, ¶18.

As discussed below, the proposed Settlement was reached following the informal exchange of information through the settlement process and after extensive arm’s-length negotiations, including the parties successfully resolving the case through the outstanding efforts of Judge

¹ As the preambles and Section 3 of the Settlement Agreement make clear, however, Defendant denies all allegations of liability, wrongdoing and damages, and believes it has substantial factual and legal defenses to all claims and class allegations relating to this case. Rather, Defendant entered the settlement to buy peace.

Fuentes. The proposed Settlement ultimately achieves an outstanding and significant recovery for the Settlement Class. Accordingly, for the reasons set forth in this brief, the settlement warrants the Court's preliminary approval and Plaintiff respectfully requests that the Court grant preliminary approval of the proposed Settlement.

II. BACKGROUND AND PROCEDURAL HISTORY

A. The Lawsuit

On January 24, 2023, Plaintiff brought a putative class action lawsuit against Defendant. Doc. 1 *passim*. Plaintiff's suit alleged that Defendant violated Section 227(c) of the Telephone Consumer Protection Act ("TCPA") and the TCPA's corresponding regulations by sending him and a putative class of persons marketing text messages after Plaintiff and the putative class members requested that Defendant stop sending them text messages. *Id.* at ¶¶ 11-23, 36-44. Defendant filed an answer and denied the allegations and that a class could be certified. Doc. 10 *passim*. A scheduling order was then entered, and the parties proceeded to discovery. Doc. 19.

B. Discovery and Settlement Negotiations

The parties exchanged written discovery after the scheduling order was entered. Roberts Dec. ¶¶ 12-13.² The parties also had extensive discussions about data that needed to be obtained from a third-party vendor and the scope of such data for purposes of settlement

² The Roberts Declaration, filed concurrently with this Memorandum, confirms the history of settlement negotiations for this lawsuit and the timing and structure of the parties' settlement negotiations. Roberts Decl. ¶¶ 12-18. The Roberts Declaration also addresses the considerations that led to the compromise in exchange for the proposed release. *Id.* at ¶¶ 24-31.

discussions. *Id.* After many discussions between counsel, and as part of settlement negotiations, the parties were able to obtain the necessary data from the third-party vendor. *Id.* at ¶¶ 12-13.

The parties then agreed to mediate the case with Magistrate Judge Fuentes. Through the outstanding efforts of Judge Fuentes, the parties were able to agree on the essential terms of a settlement. Doc. 36. The parties then memorialized the terms of their agreement in the parties' Settlement Agreement. *See* Ex. 1. This motion follows.

III. SUMMARY OF SETTLEMENT TERMS

A. The Settlement Class

The "Settlement Class" is defined as:

Those persons who opted out of receiving text messages from or on behalf of JK Buick GMC, Inc. and, thereafter, received one or more text messages from or on behalf of JK Buick GMC, Inc. The settlement class specifically includes, but is limited to, those fifty-four (54) persons identified in the data provided by Defendant to Plaintiff on November 10, 2023.

SA, Section 3. A "Settlement Class Member" is any person included in the Settlement Class who does not timely and properly opt out of the settlement. *Id.*

B. Settlement Class Members' Recovery Under The Settlement

Defendant has agreed to pay a total of \$130,000.00 for Settlement Class Members' payments, the cost of settlement administration, an incentive payment to Plaintiff and attorneys' fees and litigation expenses. *Id.* at Section 7. The proposed Settlement provides significant relief to the Settlement Class Members who need not submit a claim to receive payment. *Id.* at Section 7. Each such settlement class member will receive a payment of approximately \$1,300.00. *Id.* at Exhibits 1-3; Roberts Dec., ¶18.

C. The Release Of Claims

In return for these payments, Plaintiff and the Settlement Class Members will provide Defendant (and those acting on its behalf) a release narrowly tailored to the subject matter of this dispute as set forth in Section 15 of the Settlement Agreement. SA, Section 15. As described in the Settlement Agreement, the released claims are those “that were brought or could have been brought through final settlement approval that relate to the text messages at issue or that relate to, arise out of, or concern marketing communications, whether under the TCPA or any state law or statute relating to telemarketing.” *Id.*

D. Attorneys’ Fees, Costs, And A Service Award

Plaintiff’s counsel will seek as attorneys’ fees and litigation costs and expenses, and Defendant has agreed to pay if court approved, an amount no greater than \$43,333.33. *Id.* at Section 10. Additionally, Plaintiff will also seek, and Defendant has agreed to pay a service award in the amount of \$9,000.00 to Plaintiff. *Id.*

E. The Settlement Class Notice

The settlement fund will also be used to pay the cost of notice to the settlement class. *Id.* at Section 7. The cost of settlement and claims administration is expected to be \$5,000.00. Roberts Decl. ¶ 18 All Settlement Class Members will be sent notice via mail and/or e-mail and/or via text message. SA, Section 8. Prior to mailing of the Notice by the Administrator through the United States Postal Service, the Administrator will run all Settlement Class Members’ names and addresses through a commercial database. *Id.* A new address will also be attempted to located by the settlement administrator if a notice is returned as undeliverable. *Id.* Notice will also be published on the internet on a settlement website. *Id.*

IV. THE SETTLEMENT CLASS IS CERTIFIABLE UNDER FED. R. CIV. P. 23.

The proposed Settlement comes prior to formal class certification and seeks to certify a class simultaneous with a settlement, commonly referred to as a “settlement class.” As such, this Court must first ensure that the proposed class certification meets the requirements of Rule 23(a) and (b)(3), with the exception that the Court need not consider, in analyzing a proposed settlement class, whether trial would present intractable management problems. *See generally* William B. Rubenstein, 4 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:18 (6th ed. June 2022 Update) (hereafter “NEWBERG”); Wright and Miller, 7B FEDERAL PRAC. AND PROC. § 1797.2 (3d ed.) (April 2020 Update) (citing *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997)).

While the Supreme Court reiterated that a trial court must conduct a “rigorous analysis” to confirm that the requirements of Rule 23 have been met, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011), the requisite “rigorous analysis” of the record and consideration of the merits must be focused on and limited to the question whether the class certification requirements have been established and, here, in the context of a proposed settlement class. *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 851-52 (6th Cir. 2013).

Here, the requirements for class certification are readily satisfied for the proposed settlement class.

A. The Settlement Meets The Requirements Of Rule 23(a).

1. Numerosity

Rule 23(a) requires that the number of class members be “so numerous that joinder of all members is impracticable.” FED. R. CIV. P. 23(a). While there is no “magic number” for numerosity, “a forty-member class is often regarded as sufficient to meet the numerosity requirement.” *Mulvania v. Sheriff of Rock Island County*, 850 F.3d 849, 859 (7th Cir. 2017); *see*

also NEWBERG § 3:12. Based upon the data produced by a third-party vendor, there are 54 settlement class members. Numerosity is therefore satisfied. *See Sorensen v. CHT Corp.*, 2004 WL 442638, at *8 (N.D. Ill. Mar. 10, 2004) (holding that a class of “at least 50 members . . . easily satisfies the numerosity requirement, and courts have certified classes with far fewer members.”)

2. Commonality

Commonality only requires that “there are questions of law or fact common to the class.” FED. R. CIV. P. 23(a)(2). “[T]he commonality requirement is not usually a contentious one . . . and is easily met in most cases.” NEWBERG §13:18. To demonstrate commonality, plaintiffs’ “claims must depend upon a common contention . . . that is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Dukes*, 564 U.S. at 350. “[E]ven a single common question will do.” *Id.* at 359.

Here, it is Plaintiffs’ position (which Defendant will not oppose for purposes of this motion) that common questions include but are not limited to: (1) whether the marketing text messages sent to Plaintiff and the settlement class members after they requested to no longer receive such messages violate the TCPA and, (2) whether Plaintiff and the settlement class members are entitled to damages under the TCPA. These questions have been found to satisfy the commonality requirement in TCPA cases. *See generally Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 194 (N.D. Ill. 2018); *G.M. Sign, Inc. v. Finish Thompson, Inc.*, 2009 WL 2581324, at *4-5 (N.D. Ill. Aug. 20, 2009).

3. Typicality

Typicality requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” FED. R. CIV. P. 23(a)(3). A putative class satisfies typicality

“if the named representative’s claims have the same characteristics as the claims of the class at large.” *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 514 (7th Cir. 2006). In other words, typicality is satisfied where the class consists of “individuals who were all subject to the same conduct, and each representative’s claim would be based on the same legal theory and governed by the same law.” *Shurland v. Bacci Cafe & Pizzeria on Ognden, Inc.*, 259 F.R.D. 151, 159 (N.D. Ill. 2009) Here, the proposed class representative’s claims arising from the same alleged conduct – continuing to receive marketing text messages from Defendant after requesting to no longer receive such messages. It is Plaintiffs’ position (which Defendant will not oppose for purposes of this motion) that typicality is therefore satisfied.

4. Adequacy

Rule 23(a)(4) requires a showing that the “representative parties will fairly and adequately represent the interests of the class.” FED. R. CIV. P. 23(a)(4). The adequacy requirement is “relatively modest” and is satisfied where two requirements are met – (1) plaintiff’s counsel are qualified and competent to conduct the litigation; and (2) the plaintiffs’ interest are aligned with, and not antagonistic to, the class members. *Shurland*, 259 F.R.D. at 159. As to the first adequacy requirement, Plaintiff retained counsel experienced in class action litigation, including cases brought under the TCPA. Roberts Decl. ¶¶ 4-11.

Here, Plaintiff is a member of the proposed settlement class, and his interests are perfectly aligned with the settlement class, as he seeks to maximize everyone’s recovery of compensatory damages resulting from Defendant’s allegedly improper sending of marketing test messages after being asked to stop sending such messages. It is Plaintiffs’ position (which Defendant will not oppose for purposes of this motion) that the adequacy requirement is therefore satisfied.

Accordingly, all the requirements of Rule 23(a) are satisfied.

B. The Settlement Class Meets The Requirements Of Rule 23(b).

To qualify for certification under Rule 23(b)(3), a settlement class must meet two requirements beyond the Rule 23(a) prerequisites: common questions must predominate over any questions affecting only individual members; and class resolution must be superior to other available methods for the fair and efficient adjudication of the controversy. FED. R. CIV. P. 23(b)(3); *see generally Amchem Prods. Inc.*, 521 U.S. at 615. In a settlement class situation, the Court does not inquire whether the “case, if tried, would present intractable management problems, for the proposal is that there be no trial.” *Id.* at 620.

1. Predominance

“Predominance ‘tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.’” *Id.* at 623. Predominance is generally satisfied where “adjudication of questions of liability common to the class will achieve economies of time and expense.” *Heard v. Becton, Dickinson & Co.*, 524 F. Supp.3d 831, 849 (N.D. Ill. 2021) (*quoting Comcast Corp. v. Behrend*, 569 U.S. 27, 41 (2013)). A plaintiff must show that the common issue or issues applicable to the class as a whole predominate over those issues subject to only individualized proof.

Predominance is satisfied in TCPA cases where all members of the class are subjected to the same injury and are subjected to the same or similar telemarketing communications. *See generally Toney v. Quality Resources, Inc.*, 323 F.R.D. 567, 586 (N.D. Ill. 2018). Here, Plaintiff posits (and Defendant does not oppose for purposes of this motion) that the proposed settlement class members were subjected to the same injuries under the TCPA, which arise from receiving text messages from Defendant after requesting to no longer receive such messages (which Defendant disputes). Predominance is therefore satisfied.

2. *Superiority*

Rule 23(b)(3) also requires that a class action be superior to other available methods of fairly adjudicating the controversy. FED. R. CIV. P. 23(b)(3). The superiority of class certification over other available methods is measured by consideration of four factors: (1) the class members' interest in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already begun by or against class members; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and, (4) the likely difficulties of managing a class action. FED. R. CIV. P. 23(b)(3)(a)-(d). Ultimately, the goal of the superiority requirement is to ensure that a "class action will achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated . . ." *Amchem Prods. Inc.*, 521 U.S. at 615.

All of the superiority factors favor certification. Here, resolving this case in this forum will achieve economies of time, effort and expense by resolving the claims at issue in one fell swoop. Moreover, there is no known pending litigation concerning the issues in this case, this forum is an appropriate forum to adjudicate this case, and there are no likely difficulties in managing this case. Accordingly, all the requirements of Rule 23 are satisfied.

V. THE SETTLEMENT MERITS PRELIMINARY APPROVAL.

A. The Court Should Grant Preliminary Approval Because The Settlement Satisfies The Requirements Of Rule 23 and Applicable Precedent.

Rule 23(e) sets forth the factors that affect whether a court should approve a class action settlement. *See* FED. R. CIV. P. 23(e)(1)-(2). In the context of preliminary approval, Rule 23(e) directs putative class counsel to provide the Court with information sufficient to enable the court to determine that the settlement is fair, reasonable and adequate, and that notice is justified because the Court will likely grant final approval to the settlement. *See id.* The Rule 23(e) factors discussed

below warrant preliminary approval of this settlement as this settlement is “fair, reasonable and adequate.” FED. R. CIV. P. 23(e)(2); *see generally Wong v. Accretive Health*, 773 F.3d 859, 862 (7th Cir. 2014).

Before class notice can issue, the putative class representatives must demonstrate “that the Court will likely be able to” approve the settlement under Rule 23(e)(2); and (ii) “certify the class for purposes of judgment” arising from the settlement. FED. R. CIV. P. 23(e)(1)(B). Under Rule 23(e)(2), a court may only approve a settlement based on a finding that the proposed settlement is “fair, reasonable and adequate” after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

FED. R. CIV. P. 23(e)(2).

When considering these factors, the Court should keep in mind the presumption in favor of finding a class action settlement fair. *See generally Young v. Rolling the Dough, Inc.*, 2020 WL 969616, at *3 (N.D. Ill. Feb. 27, 2020) (*quoting Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996)). “The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding lengthy trials and appeals. Settlement is generally favored because it represents a compromise reached between the parties to the suit and relieves them, as well as the judicial system, of the costs and burdens of further litigation.” NEWBERG § 13:44.

At the preliminary approval stage, the Court is not required to determine whether it will ultimately approve the settlement, but only whether “the proposed settlement will likely earn final approval.” FED. R. CIV. P. 23(e) Adv. Comm. Note at 27; As set forth in detail below, the Rule 23(e) factors support preliminary approval of the settlement.

B. The Settlement Achieves An Excellent Result For The Proposed Settlement Class.

1. The Adequacy Of Representation

As discussed earlier, Plaintiff and Plaintiff’s counsel have adequately represented the class. Plaintiff was active in the litigation of this case by corresponding with counsel, providing necessary records, responding to discovery and attending mediation. Moreover, Plaintiff’s counsel in this lawsuit has significant experience in class actions and complex litigation, including cases brought under the TCPA. *See* Roberts Decl. ¶¶ 4-11. Plaintiff’s counsel additionally succeeded in securing a settlement with extraordinary relief against a formidable opponent. The “adequacy of representation” factor is thus satisfied.

2. The Settlement Was Negotiated At Arm’s Length

“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.” *Am. Int’l Group, Inc. v. ACA INA Holdings, Inc.*, 2012 WL 651727, at *10 (N.D. Ill. Feb. 28, 2012). Here, the parties began settlement discussions after relevant data was obtained by Defendant from its third-party vendor. Roberts Decl. ¶¶ 12-13. Moreover, the essential terms of the settlement were achieved after mediation with Judge Fuentes. *Id.* at ¶ 15; *see generally In re Navistar MaxxForce Engines Mktg., Sales Practices and Prods. Liab. Litig.*, 2020 WL 2477955, at *3 (N.D. Ill. Jan. 21, 2020) (finding settlement was negotiated at arm’s length when mediated by a retired federal judge).

3. *The Relief Provided to the Settlement Class is Outstanding.*

The relief provided to the class in this case is outstanding. Each class member who does not opt out of the settlement will receive approximately \$1,300.00, without having to submit a claim. SA, Sections 3 and 7; Roberts Dec. ¶¶ 18. This relief is extraordinary compared to other TCPA settlement that have been approved. *See generally In re Cap. One Tel. Consumer Protection Act Litig.*, 80 F. Supp.3d 781, 787, 809 (N.D. Ill. 2015) (granting final approval of a claims made settlement where each claimant would receive approximately \$39.66).

a. *The Complexity, Expense And Likely Duration Of The Litigation*

“It is common knowledge that class action suits have a well deserved reputation as being most complex.” *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977). The instant lawsuit thus could have continued for several additional years in trial and appellate courts absent settlement. For instance, the case *Krakauer v. Dish Network L.L.C.*, was filed in 2014 and received final approval in 2023. *See Krakauer v. Dish Network L.L.C.*, No. 1:14-CV-333, 2023 WL 5237091 (M.D.N.C. Aug. 15, 2023). Ultimately, the settlement should be approved as this settlement “allows the class to avoid the inherent risk, complexity, time and cost associated with continued litigation.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011).

b. *Class Members Have a Simple Way to Receive Relief From the Settlement.*

Under Rule 23(e)(2)(C)(ii), the Court also considers “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.” FED. R. CIV. P. 23(e)(2)(C)(ii). This factor is particularly concerned with “methods of processing claims so complex that they discourage class members from pursuing valid claims.” *T.K. Through Leshore v. Bytedance Tech. Co.*, 2022 WL 888943, at *14 (N.D. Ill. Mar. 25, 2022).

Here, there is no concern as class members need not submit a claim, they will simply be mailed a check if they do not opt out of the settlement. *See* SA, Sections 3 and 7.

c. The Stage Of The Proceedings

The Court's consideration of the stage of proceedings and the nature and extent of discovery in evaluating the fairness of a settlement is focused on whether the parties have obtained sufficient information to evaluate the merits of competing positions. That said, courts "encourage parties to settle class actions early, without expending unnecessary resources." *Ivery v. RMH Franchise Corp.*, 2019 WL 13256098, at *1 (N.D. Ill. July 10, 2019). The parties here engaged in written discovery and exchanged information related to the settlement class. *See* Roberts Decl. ¶¶ 12-13. Plaintiff's counsel was therefore well positioned to intelligently assess the merits of the lawsuit.

d. The Strength of Plaintiff's Case and the Value of the Settlement

A critical factor in the fairness inquiry is the court balancing "the strength of the merits of Plaintiffs' case against the value that they will receive from this settlement." *In re TikTok, Inc. Consumer Privacy Litig.*, --F.Supp.3d--, 2022 WL 2982782, at *20 (N.D. Ill. July 28, 2022). Here, the maximum each person could receive under the TCPA is up to \$500 per text (and up to \$1,500 if a willful violation). The settlement terms are very favorable as each settlement class member will receive approximately \$1,300.00.

*e. The Opinions Of Settlement Class Counsel And The Settlement Class Representatives, And The Reaction Of Settlement Class Members.*³

"The opinion of competent counsel is relevant to the question whether a settlement is fair, reasonable and adequate under Rule 23." *Schulte*, 805 F. Supp. 2d at 586. Here, Plaintiff's counsel

³ The reaction of absent settlement class members cannot be determined prior to the dissemination of notice.

strongly recommends the settlement. Roberts Decl. ¶¶ 24-31. The Settlement Class Representative, knowing that the proposed settlement will result in approximately \$1,300 per settlement class member, is similarly pleased with the proposed Settlement as he agreed to the terms.

C. Plaintiff's Forthcoming Motion Requesting Attorneys' Fees, Costs, And A Service Award Falls Within The Range Of Reasonableness Sufficient To Allow Preliminary Approval And Notice To The Settlement Class.

The settlement provides that Plaintiff's counsel will seek as attorneys' fees, costs and litigation expenses, and Defendant has agreed to pay if Court approved, an amount no greater than \$43,333.33. SA, Section 10. Plaintiff will also seek a service award in the amount of \$9,000. *Id.*

Under the Settlement Agreement, and pursuant to FED. R. CIV. P. 23(e), Settlement Class Members will receive notice that fees, costs, and litigation expenses will be sought, and will be provided information about how they can object, assuming the Court preliminarily approves the Settlement. Plaintiff's counsel will then file a motion for fees and expenses pursuant to both the Settlement Agreement and FED. R. CIV. P. 23. In turn, this Court will then award the attorneys' fees, costs, and service awards that it determines appropriate assuming the Settlement is finally approved.

Although attorneys' fees and costs are analyzed only at the final approval stage, Plaintiff's counsel will properly seek fees based upon a percentage of the amounts made available to the settlement class. At that time, Plaintiff's counsel will demonstrate that they are seeking a reasonable percentage of the amounts to be made available to the settlement class. A "typical contingency agreement in this circuit might range from 33% to 40% of recovery." *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201-02 (N.D. Ill. 2018). Further, Plaintiff's counsel will also show that the percentage to be sought here is generally below that approved by federal courts.

Assuming preliminary approval of the settlement is granted, Plaintiff's counsel will show upon final approval that the attorneys' fees sought here are fully consistent with comparable cases. Here, pursuant to the parties' agreement, Defendant has agreed to pay, subject to Court approval, an amount no greater than \$43,333.33 in attorneys' fees and litigation expenses. Thus, attorneys' fees sought are approximately 33 1/3% of the aggregate value of the proposed settlement fund.⁴ This is within the range of reasonableness for fee awards.

Finally, the payment to Plaintiff of a service award of \$9,000 sought here is consistent with awards in this Court. *See, e.g., Castillo v. Noodles & Co.*, 2016 WL 7451626, at *2 (N.D. Ill. Dec. 23, 2016) (awarding \$10,000.00 representative service award).

Further, the proposed settlement class representative, William Quinn, obtained a settlement with an aggregate value of \$130,000.00. His willingness to serve as class representative, to stay updated on the case, to provide necessary information and records, and to attend mediation, was critical to the litigation. Because this Court will fully analyze the appropriateness and amount of the service award at the final approval hearing, the proposed service award in the settlement does not provide grounds for delaying the grant of preliminary approval.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court preliminarily approve the settlement. To comply with the notice requirements, and to allow sufficient time after notice for settlement class members to decide whether to opt out of the settlement class or to object to the settlement, Plaintiff requests that the Court schedule a final fairness hearing approximately 90 days from the date of preliminary approval.

⁴ The United States Supreme Court holds 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 attorneys' fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, (1980).

Dated: March 11, 2024

By: /s/ Christopher E. Roberts
David T. Butsch #6205434
Christopher E. Roberts #6302857
BUTSCH ROBERTS & ASSOCIATES LLC
7777 Bonhomme Avenue, Suite 1300
Clayton, MO 63105
Tel: (314) 863-5700
butsch@butschroberts.com
roberts@butschroberts.com

and

James X. Bormes #6202568
Catherine P. Sons #6290805
LAW OFFICE OF JAMES X. BORMES, P.C.
8 South Michigan Avenue, Ste. 2600
Chicago, Illinois 60603
Tel: (312) 201-0575
bormeslaw@sbcglobal.net
cpsons@bormeslaw.com

*Attorneys for Plaintiff and
Putative Class Representatives*

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2024, a copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Christopher E. Roberts

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Plaintiff William Quinn (“Plaintiff” or “Quinn”), on behalf of himself and a putative class of persons (identified and defined below as the “Settlement Class”), and Defendant JK Buick GMC, Inc. (“Defendant”), subject to court approval. Plaintiff and Defendant are collectively referred to as the “Parties.”

WHEREAS Plaintiff filed a putative class action against Defendant in the Northern District of Illinois, Case No. 1:23-cv-00447, under the Telephone Consumer Protection Act (“TCPA”). Plaintiff alleged Defendant violated the TCPA by sending text messages to Plaintiff and the members of the Settlement Class after said persons requested such text messages stop and after Defendant confirmed it would no longer send such text messages. The action is referred to as “the Lawsuit”;

WHEREAS the Parties commenced written discovery and engaged in the exchange of information obtained from a third-party for purposes of settlement subject to the Agreed Confidentiality Order entered on March 31, 2023;

WHEREAS the Parties conducted a mediation before Magistrate Judge Gabriel Fuentes, and, were able to reach the essential terms of a settlement after extensive arm’s length negotiations before and during the mediation;

WHEREAS, Defendant denies and continues to deny the claims asserted by Plaintiff, denies Plaintiff and/or the Settlement Class are entitled to damages and maintains that they have meritorious defenses to class certification and the claims alleged in the Lawsuit;

WHEREAS, while denying all liability and without admitting or conceding fault or liability or the validity of Plaintiff’s claims, class treatment, or that Plaintiff or any individual in the Settlement Class is entitled to any relief as a result of Defendant’s conduct, Defendant has agreed to settle the claims that are the subject of the Lawsuit as set forth in this Agreement;

WHEREAS, the Settlement Class includes fifty-four (54) persons to whom post-stop text messages were sent;

WHEREFORE, the Parties stipulate and agree that the claims of Plaintiff and the Settlement Class should be and are hereby compromised and settled, subject to approval by the District Court, upon the following terms and conditions:

1. Recitals. The above-described recitals are incorporated into this Agreement.
2. For Settlement Only. This Agreement is entered into for purposes of resolving the disputes between Defendant on one hand, and Plaintiff and the Settlement Class on the other, concerning certain claims asserted in the Lawsuit. The Parties desire and intend to seek the District Court's approval of the settlement and a final judgment approving the settlement between the Parties concerning the claims of Plaintiff and the Settlement Class Members as set forth in this Agreement. The Parties agree to undertake all steps necessary to effectuate the purpose of the Agreement, to secure the District Court's approval of the Agreement, and to oppose any interventions and objections to the Agreement. If the District Court does not finally approve the Agreement, the Parties expressly agree that this Agreement is a nullity as described in Paragraph 16.
3. Certification of the Settlement Class. For settlement purposes only, the Parties hereby stipulate to seek certification for settlement purposes only of the following settlement class, defined as follows: Those persons who opted out of receiving text messages from or on behalf of JK Buick GMC, Inc. and, thereafter, received one or more text messages from or on behalf of JK Buick GMC, Inc. The settlement class specifically includes, but is limited to, those fifty-four (54) persons identified in the data provided by Defendant to Plaintiff on November 10, 2023. This class is referred to as the "Settlement Class."

“Settlement Class Member” means any person included in the Settlement Class who does not timely and properly opt out of this settlement. Defendant does not oppose and hereby agrees to certification of the Settlement Class for settlement purposes only, but that will not be deemed a concession that certification of any litigation class in the Lawsuit is, or was, appropriate, nor would Defendant be precluded from challenging class certification in further proceedings in the Lawsuit or in any other action if the Settlement is not finalized or finally approved. If the Settlement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class resulting from this Agreement will be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings involving Defendant.

4. Representation of the Settlement Class. Plaintiff will request to be appointed as the “Class Representative” of the Settlement Class. Christopher E. Roberts and David T. Butsch of Butsch Roberts & Associates LLC and James X. Bormes of The Law Office of James X. Bormes will request to be appointed as “Class Counsel” of the Settlement Class. Defendant will not oppose these requests.

5. Notice Information: To the extent Defendant can reasonably determine from its records, Defendant will provide the Settlement Administrator (defined in Paragraph 10) and Class Counsel with the last known phone number, name, address and e-mail of each Settlement Class Member. This information is referred to as the “Notice Information.” Defendant will provide a declaration attesting that the Notice Information provided to Class Counsel is the information Defendant has in its possession. Defendant will provide the Notice Information to the Settlement Administrator and Class Counsel within seven days of the Parties signing the Agreement.

6. Preliminary Approval. Plaintiff will file a motion with the District Court for preliminary approval of the Settlement on or before January 31, 2024. The motion for preliminary

approval will seek an order that: (a) preliminarily approves the settlement of the Lawsuit; (b) certifies the Settlement Class as defined in Paragraph 3 above; (c) approves and appoints Plaintiff as representative of the Settlement Class; (d) approves and appoints attorneys Christopher E. Roberts and David T. Butsch of Butsch Roberts & Associates LLC and James X. Bormes of the Law Office of James X. Bormes as Class Counsel of the Settlement Class; (e) approves the forms prepared by the Parties for giving notice of the settlement to the members of the Settlement Class, copies of which are attached to this Agreement; (f) approves the methods agreed to by the Parties for giving notice of the settlement to the Settlement Class; and, (g) sets deadlines for: (1) providing notice to the members of the Settlement Class; and, (2) members of the Settlement Class to submit requests for exclusion/opt-out and objections to the proposed settlement. The Parties will then seek final approval of the settlement and entry of a “Final Approval Order and Judgment” (as defined in Paragraph 12).

7. The Relief. Defendant will pay \$130,000.00 as the total settlement amount, which shall be used to pay the members of the Settlement Class, the cost of settlement administration, a class representative service award, and Class Counsel’s attorneys’ fees and litigation expenses (the “Settlement Fund”). Under no circumstances will Defendant be required to pay more than \$130,000.00 under this Agreement. No amounts will revert to Defendant.

The Settlement Administrator will establish a Qualified Settlement Fund (QSF) as described in U.S. Treasury Regulations section 468B-1, 29 C.F.R. § 468B-1 and provide written notice to Defendant’s counsel of the information needed to deposit funds into the QSF account. Within seven (7) business days from the date the Settlement Administrator provides notice to Defendant’s counsel of the information needed to deposit funds into the QSF account, and 14 days after the Court granting preliminary approval of the settlement, whichever comes later, Defendant

shall deposit ten thousand dollars (\$10,000.00) into the QSF account. Within seven (7) business days from the date the Settlement Administrator provides notice to Defendant's counsel of the information needed to deposit funds into the QSF account, and 14 days after the Court granting final approval of the settlement, whichever comes later, Defendant shall deposit the remainder of the Settlement Funds, one hundred twenty thousand dollars (\$120,000.00) into the QSF account, however the amount shall be reduced by \$1,300 for every Settlement Class Member who opts out of the settlement and/or who is not otherwise deemed released.

Each member of the Settlement Class will receive a *pro rata* share of the Settlement Fund after accounting for the cost of settlement administration, the representative service award, and attorneys' fees and expenses. Payments shall be made by check from the Settlement Administrator to each Settlement Class Member. Members of the Settlement Class need not submit a claim to receive payment.

The amount of all checks uncashed within 120 days of distribution by the settlement administrator shall be distributed by the Settlement Administrator in accordance with the escheatment requirements of the state in which the Settlement Class Member is located. In the event that there is a Settlement Class Member to whom only text message notice can be provided and who fails to provide a current address to the Settlement Administrator for purposes of mailing the individual a settlement check, the uncashed check amount shall be distributed by the Settlement Administrator in accordance with the escheatment requirements of the state of Illinois.

8. Notice to Settlement Class. In the event of an order granting preliminary approval of the settlement by the District Court as described in Paragraph 6, notice of the settlement will be mailed and e-mailed to the individuals in the Settlement Class within fourteen days after such order. The Settlement Administrator will send the settlement class notice by first class U.S. mail

to persons in the Settlement Class at such persons last known address, as listed in the Notice Information, and will also send the notice by e-mail to all members of the Settlement Class for whom Defendant has an e-mail address. Prior to mailing the notice, the Settlement Administrator will update the address information provided by Defendant through the National Change of Address (“NCOA”) database maintained by the U.S. Postal Service and shall run a search to determine and/or confirm the names and addresses of the Settlement Class Members. Any mailed notice returned to the Settlement Administrator with a new forwarding address will be re-mailed one time to the individual at the new forwarding address. The mail notice to the Settlement Class will contain a summary description of the Agreement, and direct recipients to the settlement website, from which information about the settlement can also be obtained and through which forms providing for a current U.S. Mailing address may be uploaded . In the event that no mailing address or e-mail address can be identified by the Settlement Administrator for the Settlement Class Member, the Settlement Administrator shall provide notice to the Settlement Class Member by text message to the number provided by Defendant, which shall identify the individual as a Settlement Class Member and direct them to the settlement website for information and to provide the Settlement Administrator with their current address to which a settlement check will be directed. The Settlement Administrator will provide a declaration with the District Court, as part of the final approval papers, stating that these notice procedures were followed.

The Settlement Administrator shall set up a dedicated website which will advise persons of the settlement, include the settlement agreement, include certain pleadings filed in the case, provide forms for the Settlement Class Member to provide a current mailing address, and which will answer frequently asked questions about the case.

The parties agree that Notice to the Settlement Class, which will be sent, will be substantially similar to that attached as Exhibit 1 or Exhibit 2 (text message only notice). The parties agree that the Long Form Notice to the Settlement Class, which will only appear on the settlement website, will be substantially similar to that attached as Exhibit 3.

9. Exclusions and Objections: Settlement Class members shall have 60 days from the day notice is sent to object to or exclude themselves from the settlement. For an objection to be valid, the objection shall state: (a) the name, address, and phone number of the objector, (b) the specific bases for the objection, (c) whether they intend to appear at the final approval hearing. Counsel shall also have the option to take the deposition of the objector within 21 days of receiving the objection. If eight or more people opt out of the settlement, Defendant has the option to not proceed with the settlement.

10. Incentive Award and Attorneys' Fees. Class Counsel will apply for an award of up to 33 1/3% of the settlement fund (\$43,333.33) for their attorneys' fees and reasonable litigation expenses. Class Counsel will also request an incentive award for Plaintiff of up to nine-thousand (\$9,000.00) for his service in the Lawsuit. Defendant will not oppose these amounts. The incentive award and attorney fee award will be set forth in the Final Approval Order and Judgment and is within the Court's sole discretion to award.

11. Settlement Administration and Expenses. Atticus Administration LLC shall act as the settlement administrator for purposes of issuing notice to the members of the Settlement Class and administering the settlement ("Settlement Administrator"). Defendant shall pay the administrator's costs and expenses through the Settlement Fund. The Settlement Administrator shall comply with all notice requirements set forth in this Agreement.

12. Final Approval. The preliminary approval order described in Paragraph 6 will set a date for a Final Approval Hearing, at which the Parties will request that the District Court enter a Final Approval Order and Judgment, consistent with this Agreement and the Parties' efforts to consummate the settlement. With the exception of up-front costs required by the Settlement Administrator, Defendant shall not be obligated to pay any sum pursuant to this Agreement except after the "Effective Date," as described in Paragraph 13.

13. Effective Date. If there are no objections to the settlement, the "Effective Date" of this Agreement shall be the fourteen calendar days after the District Court has signed the Final Approval Order and Judgment as applied to Plaintiff and the Settlement Class Members. If there are objections to the settlement, the Effective Date shall be fourteen days after all of the following conditions have occurred and been satisfied:

(a) The District Court has entered: (i) a final order approving this Settlement Agreement under Federal Rule of Civil Procedure 23; and (ii) a final judgment granting the relief and releases described in this Agreement, including that in Paragraphs 7 and 15; and

(b) The time for appeal or to seek permission to appeal from the District Court's approval of this Agreement and entry of final judgment described in subsection (a) of this paragraph has expired or, if appealed, approvals of this Agreement and any final judgment have been affirmed by the court of last resort to which such appeal can be taken, and such affirmance has become no longer subject to further appeal or review.

14. Payments. Within twenty-one (21) days after the Effective Date, the Settlement Administrator shall distribute the Settlement Class Member payments described in Paragraph 7,

and the attorney's fees and incentive awards described in Paragraph 10, consistent with the Final Approval Order and Judgment.

15. Release. Upon entry of Final Approval and Judgment, Plaintiff and each member of the Settlement Class who does not properly exclude themselves from the settlement will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, Defendant, its parent, divisions, subsidiaries, partnerships, affiliates, predecessors, past, present and future trustees, fiduciaries, shareholders, administrators, partners, principals, insurers, attorneys, owners, officers, directors, members, managers, agents, employees, and representatives from all past and present claims, demands, obligations, actions, damages, costs, expenses and/or compensation of any nature whatsoever, whether in law or equity, based in tort, contract, statute, or any other theory of recovery, and whether for compensatory or other damages, or for declaratory or equitable relief, known and unknown, foreseen or unforeseen, that were brought or could have been brought through final settlement approval that relate to the text messages at issue or that relate to, arise out of, or concern marketing communications, whether under the TCPA or any state law or statute relating to telemarketing ("Released Claims").

16. Effect of Trial Court's Denial of Preliminary or Final Approval. This Agreement is null and void, if the District Court does not preliminarily approve the settlement in substantially the same form as set forth in this Agreement, or if the settlement or the judgment approving the settlement is appealed and not approved on appeal in substantially the same form as set forth in this Agreement. In such event, and upon the trial court entering an order unconditionally and finally adjudicating that this Agreement and settlement will not be approved in substantially the same form as set forth in this Agreement, then: (a) this Agreement is terminated and is of no force and effect, and no party shall be bound by any of its terms, except for Defendants' reimbursement

of the Settlement Administrator's expenses; (b) to the extent applicable, any preliminary order approving the settlement, certifying the Settlement Class, approving the notice or notice procedure, and providing notice to the Settlement Class shall be vacated; (c) the Agreement and all of its provisions and all negotiations, statements, and proceedings shall be without prejudice to the rights of any of the Parties; (d) each of the Parties shall be restored to their respective positions as of the date this Agreement was fully executed; and, (e) neither the settlement nor any of its provisions or the fact that this Agreement has been made shall be admissible in this Lawsuit, or discoverable or admissible in any other action for any purpose whatsoever.

17. Requests by Individuals in Settlement Class. Requests for exclusion, objections to the settlement, and all other notices regarding the settlement, to the extent received by either Party, shall be sent to the Settlement Administrator.

18. No Admission of Liability. This Agreement affects the settlement of claims that are denied and contested, and nothing contained herein shall be construed as an admission by Defendant of any liability of any kind. Defendant denies any liability in connection with any claims made in the Lawsuits. Defendant enters into this Agreement merely to avoid further litigation.

This Agreement, including all exhibits and related documents presented in the course of the Lawsuit and/or settlement negotiations, do not constitute, and are not intended to constitute, and will not be deemed to constitute, an admission by Defendant as to the merits of the allegations or claims made in the Lawsuit. Nothing in this Agreement, including any action taken in implementation thereof, any statements, discussions or communications, and any materials prepared, exchanged, issued or used during the course of the Lawsuit or the negotiations leading to the Agreement, is intended to be introduced, be used or be admissible in any way in the Lawsuit or any other judicial, arbitral, administrative, investigative or other forum or proceeding as

evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Agreement or any orders or judgments of the Court entered in connection therewith. In the event that this Agreement is not approved by the Court or by an appellate court, Defendant shall not be deemed to have waived, limited, or affected in any way any objections or defenses in the Lawsuit.

19. Entire Agreement. This Agreement contains the entire agreement and understanding between the Parties concerning the subject matter hereof, and any and all prior oral or written agreements or understandings between the Parties related hereto are superseded. This Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all Parties.

20. Headings. Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

21. Warranties. The Parties further represent, warrant, and agree that, in executing this Agreement, they do so with full knowledge of any and all rights they may have with respect to the claims released in this Agreement, and that they have received legal counsel from their attorneys with regard to the facts involved and the controversy herein compromised and with regard to their rights arising out of such facts. Each Party represents such party has not assigned, transferred or granted, or purported to assign, transfer, or grant, any of the claims, demands and cause(s) of action asserted in the Lawsuit. Each of the Parties executing this Agreement warrants that he or she has the authority to enter into this Agreement and to legally bind the Party for which he or she is signing.

22. Successors and Assigns. This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective insurers, successors, assigns, heirs, agents, employees, attorneys, representatives, officers, parents, affiliates, and subsidiaries.

23. Further Cooperation. The Parties agree to execute such further and additional documents and instruments, as shall be necessary or expedient to carry out the provisions of this Agreement and shall in good faith undertake all reasonable acts to effectuate the provisions of this Agreement.

24. Governing Law. The contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the State of Illinois, without regard to its conflict of laws or choice of law provisions. All suits to enforce this Agreement shall be brought in the United States District Court for the Northern District of Illinois.

25. Mutual Interpretation. The Parties agree and stipulate that the settlement was negotiated on an “arm’s-length” basis between parties of equal bargaining power. The Agreement has been drafted jointly by Class Counsel and Defendant’s counsel. Accordingly, this Agreement is mutually created, and no ambiguity shall be construed in favor of or against any of the Parties. This Agreement was prepared after an agreement in principle to resolve the case was reached after a mediation with Magistrate Judge Gabriel Fuentes.

26. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and such counterparts together shall constitute one instrument. Electronically scanned signatures are acceptable for the execution of this Agreement.

27. Severability. Each term and provision of this Agreement shall be construed and interpreted so as to render it enforceable. In the event any provision of this Agreement is held to be illegal or unenforceable, the remainder of this Agreement shall be binding and enforceable.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) set forth below.

Dated: 3/9/2024

DocuSigned by:
William Quinn
AB23EAF50B384F0...

William Quinn

Dated: _____

JK Buick, GMC, Inc.

By: _____

Printed Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) set forth below.

Dated: _____

William Quinn

Dated: 3/11/24

JK Buick, GMC, Inc.

By: _____

Printed Name: _____

John Spellman

Title: _____

General Manager

EXHIBIT 1

Quinn v. JK Buick GMC, Inc.

United States District Court for the Northern District of Illinois, Case No. 1:23-cv-00447

IMPORTANT LEGAL NOTICE - This Notice was authorized by the Court. It is not a solicitation from an attorney.

YOU HAVE BEEN IDENTIFIED AS HAVING RECEIVED A MARKETING TEXT MESSAGE FROM JK BUICK GMC, INC., AFTER REQUESTING TO NO LONGER RECEIVE SUCH MESSAGES, AND YOU MAY BE ELIGIBLE FOR A SETTLEMENT PAYMENT.

A proposed Settlement has been reached in a putative class action lawsuit that may affect your rights. The lawsuit alleges that JK Buick GMC, Inc. violated the Telephone Consumer Protection Act by sending marketing text messages to persons after said persons requested to no longer receive such messages.

- JK Buick GMC, Inc.'s records indicate that you are a settlement class member. You may be eligible for a payment of approximately **\$1,300**.

JK BUICK TCPA SETTLEMENT
C/O ATTICUS ADMINISTRATION
PO BOX 64053
SAINT PAUL MN 55164

Presorted First-Class Mail
U.S. Postage
PAID
Twin Cities MN
Permit #XXX



<<barcode>>
<<barcode>>

CLAIMANT ID: <<Unique ID>>
<<FIRST NAME>> <<LAST NAME>>
<<ADDRESS 1>> <<ADDRESS 2>>
<<CITY>> <<ST>> <<ZIP>>

To receive a payment from this Settlement you need not do anything. **Opt-Out Option:** If you do not wish to participate in the Settlement, you must mail an “Opt-Out” Request to the Settlement Administrator postmarked no later than **[60 days after notice is sent]** or submit your opt-out request online at www.JKBuicksettlement.com. If you “opt-out”, you will not be legally bound by anything that happens in this lawsuit, but you will not be eligible to receive a Settlement payment. If you do not “opt-out,” and the Court grants final approval of the Settlement, you will release the claims asserted in the lawsuit against JK Buick GMC, Inc. and others as detailed in the Settlement Agreement, available at www.JKBuicksettlement.com

Objection Option: If you do not “opt-out” and wish to object to the Settlement, you must inform the Court through a written objection of why you do not like the settlement. The objection must contain specific information that can be found in the full Class Notice on the settlement website and must be mailed to the Settlement Administrator by **[60 days after notice]**. The Court will consider objections at the Final Approval Hearing. If you object and wish to speak at the hearing, you may file a Notice of Intent to Appear with the Court through your own attorney and at your own expense. The Court appointed the law firms of Butsch Roberts & Associates LLC and The Law Office of James X. Bormes. as Class Counsel to represent the interests of the Settlement Class. The Court will hold a **Final Approval Hearing** on **[hearing date]** at **[hearing time]** in the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Courtroom 2266, Chicago, Illinois 60604. To review the complete Class Notice and for more information about the Settlement and the case, “Opt-Out” or submit an Objection, please visit the Settlement Website at www.JKBuicksettlement.com. You may also call or email the Settlement Administrator at **1-800-XXX-XXXX** or JKBuicksettlement@atticusadmin.com with any questions or to have the full Class Notice mailed or e-mailed to you.

EXHIBIT 2

TEXT NOTICE – TO SETTLEMENT CLASS MEMBERS
WITH NO ADDRESS OR E-MAIL ADDRESS INFORMATION

“You may be a member in the Quinn v. JK Buick GMC, Inc. class action settlement. You may be entitled to receive a payment of approximately \$1,300.00 as part of this settlement. However, the class settlement administrator does not have your mailing address. More information about the settlement is located at www.JKBuickSettlement.com. If you wish to receive payment, please confirm your name and mailing address with the settlement administrator at XXXXX. You may also contact Settlement Class Counsel, Christopher E. Roberts, at 314-863-5700 or croberts@butschroberts.com. This notice has been authorized by the United States District Court for the Northern District of Illinois.”

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

WILLIAM QUINN, *individually and on* §
behalf of all others similarly situated, §

Case No. 1:23-cv-00447

Plaintiff, §

v. §

JK BUICK GMC, INC., §

Defendant. §

NOTICE OF CLASS ACTION SETTLEMENT

The District Court has authorized this Notice. This is **NOT** a solicitation from a lawyer. Please read this Notice carefully as it may affect your legal rights. **Do not be alarmed. You have not been sued; nor have you “filed” a lawsuit.**

This notice is being sent to you because you have been identified to be among a settlement “class” of persons who received a marketing text message from Defendant JK Buick GMC, Inc. (“Defendant” or “JK Buick GMC”) after requesting that Defendant stop sending you such text messages.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CASE

These rights and options and the deadlines to exercise them are explained below.

<p>IF YOU WANT TO PARTICIPATE FULLY IN THIS CASE</p>	<p>If you want to be included in this case, <u>then you need not take any further action.</u></p> <p>Settlement Class Counsel estimate that you will receive a payment of approximately \$1,300.00.</p> <p>The relief afforded to you is described in Section 7 below and in the settlement agreement available on the settlement website, www.JKBuicksettlement.com.</p>
<p>IF YOU <u>DO NOT</u> WANT TO PARTICIPATE IN THIS CASE AT ALL</p>	<p>If you do not want to participate or be included in this case, then you must send written notice by mail that you wish to exclude yourself from the settlement, postmarked or uploaded to www.JKBuicksettlement.com no later than <u>[60 days after notice is mailed]</u>. Instructions for doing so are in Section 8 below.</p> <p>If you choose not to participate in this case, you give up the possibility of getting money or benefits that may come from the</p>

	settlement of this case. You keep any rights to sue Defendant about certain legal claims arising from communications directed to you, but the statute of limitations (the deadline for you to file your potential claims) continues to run.
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Your options are explained in this Notice.

1. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff William Quinn (“Plaintiff”) filed a civil lawsuit against Defendant. Plaintiff filed the lawsuit on behalf of himself and as a putative class action on behalf of the group or “class” of persons who were sent marketing text messages from Defendant after Defendant was requested to stop sending such messages. Plaintiff alleges Defendant violated the Telephone Consumer Protection Act (“TCPA”) by sending such marketing text messages after Plaintiff and the class members requested Defendant stop sending them such messages. Defendant denies these allegations and that this case should process as a class action.

2. WHAT IS A CLASS ACTION AND WHO IS INVOLVED?

In a class action case, one or more persons sue on behalf of other people who have similar claims. The person who sues is called the named Plaintiff. The named Plaintiff seeks to represent all similarly situated people in the court. The named Plaintiff in this lawsuit is William Quinn.

3. WHY DID I RECEIVE THIS NOTICE?

This notice is being made available to you because the parties have agreed to settle the lawsuit and you have been identified as a settlement class member who received marketing text messages after requesting that Defendant no longer send you such messages.

Do not be alarmed. **You have not been sued; nor have you “filed” a lawsuit.** This Notice simply informs you of the named Plaintiff’s lawsuit and lets you know that you have been identified as a member of the Settlement Class and to advise you of your rights and options as a Settlement Class member.

4. HAS THE JUDGE DECIDED WHO IS RIGHT?

No. The judge is not suggesting that the named Plaintiff or the Settlement Class would have won or lost the case.

5. HOW DO I KNOW IF I AM A MEMBER OF THE SETTLEMENT CLASS?

By Order dated **XXXXXX**, the Court certified the following class of persons in the Lawsuit, for settlement purposes only:

Those persons who opted out of receiving text messages from or on behalf of JK

Buick GMC, Inc. and, thereafter, received one or more text messages from or on behalf of JK Buick GMC, Inc. The settlement class specifically includes, but is limited to, those fifty-four (54) persons identified in the data provided by Defendant to Plaintiff on November 10, 2023.

You have been identified as a member of the above Settlement Class.

6. WHO IS CLASS COUNSEL?

The Court appointed the named Plaintiff's attorneys in the Lawsuit as Counsel for the Settlement Class ("Class Counsel"). Class Counsel are Christopher E. Roberts and David T. Butsch of Butsch Roberts & Associates LLC and James X. Bormes of The Law Offices of James X. Bormes. You are not required to hire your own lawyer because Class Counsel will be working on your behalf as a member of the Settlement Class. If you want to hire your own lawyer you are permitted to do so at your own expense.

7. WHAT WILL I RECEIVE AS PART OF THE SETTLEMENT?

Class Counsel estimate you will receive a payment of approximately \$1,300.00 in the settlement.

Defendant will pay a total of \$130,000.00 to pay Settlement Class members' claims, the cost of settlement administration, a settlement class representative service award and Class Counsel's attorneys' fees and expenses. Each Settlement Class member will receive a pro rata share of the remaining amount after accounting for the cost of settlement administration, a representative service award and attorneys' fees and litigation expenses.

8. WHAT DO I NEED TO DO TO RECEIVE THE BENEFIT OF THE SETTLEMENT?

You need not take any further action to receive compensation as part of this settlement.

9. WHAT IF I WANT TO EXCLUDE MYSELF FROM THE SETTLEMENT OR OBJECT TO THE SETTLEMENT?

If you do not want to be a member of the Settlement Class and participate in this Lawsuit, you can ask the Court to exclude you from the Lawsuit and allow you to "opt out" by sending such correspondence in writing to:

JK Buick TCPA Settlement
c/o Atticus Administration, LLC
1250 Northland Drive, Suite 240
Mendota Heights, Minnesota 55120

To be effective, the request to exclude yourself to the settlement must be completed, signed and postmarked by [60 days from the date notice is mailed].

If you choose to be excluded from the Settlement Class:

1. Your claims against Defendant, if any, will not be decided in the Lawsuit and you will not share in any recovery that the named Plaintiff obtain for the Settlement Class.
2. You will not be bound by any determinations or any judgment that the Court makes or enters in the Lawsuit, whether favorable or unfavorable.
3. You will not be entitled to any further notice with regard to the Lawsuit.
4. You may pursue any claims you have against Defendant at your own expense and risk by filing your own separate lawsuit, should you choose to do so, and assuming you have a claim and the applicable statute of limitations to file a case has not run.
5. Be aware that any claims that you have or may have against Defendant are limited by the applicable statute of limitations and declining to participate in this case by opting out, or by proceeding separately, may result in some or all of your claims expiring as a matter of law.

Any Settlement Class Member who wishes to object to the settlement or wishes to appear at the Final Approval Hearing and show cause, if any, why the same should not be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class, or why a final judgment should not be entered thereon, must serve and file written objections. The objection must contain the objector's full name, telephone number, and current address; must declare that the objector is a member of the Settlement Class; and must provide a detailed statement of the objector's specific objections to any matter before the Court and the grounds of the objection. Said objections must be mailed to:

JK Buick TCPA Settlement
c/o Atticus Administration, LLC
1250 Northland Drive, Suite 240
Mendota Heights, Minnesota 55120

To be effective, the request to object to the settlement must be completed, signed and postmarked by [60 days from the date notice is mailed].

10. HOW WILL CLASS COUNSEL AND THE CLASS REPRESENTATIVE OF THE SETTLEMENT CLASS BE PAID?

Class Counsel will seek an award of attorney's fees and expenses of up to 33 1/3% of the settlement fund (\$43,333.33). The Court will determine the amount of fees and expenses that should be awarded to class counsel. Plaintiff will seek an award of up to \$9,000.00 for his service as the settlement class representative.

11. WHAT IF I HAVE QUESTIONS?

You should not contact the Clerk of The Court, Judge, or Defendant’s Counsel with questions about this case. Instead, if you have any questions about your claim or rights or would like more information, you should call Class Counsel Christopher E. Roberts of Butsch Roberts & Associates LLC at 314-863-5700 or James X. Bormes of The Law Offices of James X. Bormes at 312-332-0600. You can also speak with your own attorney.

You can review and obtain copies of the Lawsuit, the Court’s Order granting Preliminary Approval of the Settlement and any other pleadings and filings in the Lawsuit directly from Class Counsel, by contacting Class Counsel at the number above. You can also review and obtain copies of these papers at your own expense at the Clerk of the Court for the United States District Court for the Northern District of Illinois.

12. WILL THERE BE A HEARING REGARDING THE APPROVAL OF THE SETTLEMENT?

The Final Approval Hearing will take place on XXXXXXXX, 2024 at XX:00 a.m. before Magistrate Judge Gabriel Fuentes, Courtroom 2266, United States District Court for the Northern District of Illinois, 219 South Dearborn Street, , Chicago, Illinois 60604.

Dated: _____, 2024

This Notice is being made available pursuant to Federal Rule of Civil Procedure 23 and by Order of the Court.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WILLIAM QUINN, individually, and on behalf of all others similarly situated,)	
)	
Plaintiff,)	Case No.: 1:23-cv-00447
)	
v.)	Hon. Gabriel Fuentes
)	
JK BUICK GMC, INC. d/b/a BILL KAY AUTO GROUP,)	
)	
Defendant.)	
)	
)	

DECLARATION OF CHRISTOPHER E. ROBERTS

I, Christopher E. Roberts, hereby declare, pursuant to 28 U.S.C. § 1746:

1. This Declaration is submitted in support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Settlement.

2. I am over the age of 18 years, am of sound mind and am otherwise competent to make this declaration. I have personal knowledge of the matters asserted in this Declaration.

3. I represent Plaintiff William Quinn in the above-captioned matter. I am not related to Mr. Quinn. As relevant here, this matter concerns whether Defendant violated the Telephone Consumer Protection Act (“TCPA”) by continuing to send marketing text messages to Plaintiff and the putative class members after such persons requested that Defendant stop sending them text messages. Defendant disputes these allegations.

Biographical Information

4. I am a partner with the firm of Butsch Roberts & Associates LLC. I submit this declaration in support of Plaintiff’s motion for preliminary approval of settlement in the above-

captioned action. I am a member in good standing of the Illinois, Missouri and Kansas Bars, and I have never been the subject of any disciplinary proceeding. Furthermore, I am admitted to practice before this Court, The United States Court of Appeals for the Eighth Circuit, the United States Court of Appeals for the Ninth Circuit, the United States Court of Appeals for the Tenth Circuit, the United States District Court for the Northern District of Illinois, the United States District Court for the Southern District of Illinois, the United States District Court for the Eastern District of Missouri, the United States District Court for the Western District of Missouri, the United States District Court for the District of Kansas, the United States District Court for the Southern District of Texas, the United States District Court for the Northern District of Texas and the United States District Court for the District of Colorado.

5. I am a 2009 graduate of the University of Missouri-Kansas City School of Law, where I received my Juris Doctor degree. I was admitted to the Missouri Bar in 2009, the Illinois Bar in 2010 and the Kansas Bar in 2010.

6. I frequently speak to members of the Missouri Bar on class action practice and consumer law-related issues. I spoke most recently in 2022 at the Solo and Small Firm Conference sponsored by The Missouri Bar about class action practice and procedure.

7. In addition, I am a frequent contributor to the American Bar Association on class action-related issues. I am the author of a chapter in the 2018, 2020, 2021, 2022 and 2023 books published by the American Bar Association about class action law from each Circuit Court of Appeals. The chapter I authored in each publication focuses on class action jurisprudence in the Eighth Circuit Court of Appeals. I have also written multiple articles on class action-related issues that have been published by the American Bar Association.

8. I have been appointed to serve as class counsel in numerous cases, including, but not limited to: *Ruby v. Build-A-Bear, Inc.*, Case No. 4:21-cv-01152-JAR (E.D. Mo. 2023) (TCPA case); *Staunton Lodge No. 177, A.F. & A.M. v. Pekin Insurance Company*, Case No. 2020-L-001297, Circuit Court of Madison County, Illinois; *Smith v. Leif Johnson Ford, Inc.*, Case No. 19SL-CC01942, Circuit Court of St. Louis County, Missouri (TCPA case); *Martin v. Wakefield & Associates, Inc.*, Case No. 19SL-AC12801-01, Circuit Court of St. Louis County; *Harding and Moore v. Wakefield & Associates, Inc.*, Case No. 18SL-AC26348-01, Circuit Court of St. Louis County; *Maierhoffer v. Blitt & Gaines, P.C.*, Case No. 17SL-CC04297, Circuit Court of St. Louis County; *Harris v. Wakefield & Associates, Inc.*, Case No. 1722-CC11907, Circuit Court of the City of St. Louis; *Moore v. Family Dollar Stores, Inc.*, No. 14-01542-JAR (E.D. Mo. 2016) (TCPA case); *Wallach v. Federal Financial Group LLC*, Circuit Court of St. Louis County, No. 15SL-CC01040-01 (TCPA case); *Kissel v. Liberty Acquisitions Servicing, LLC*, Case No. 1411-CC00504, Circuit Court of St. Charles County; *Lewis v. Spinnaker Resorts, Inc.*, Circuit Court of Christian County, No. 14AF-CC00413-01; *Harbison v. Litow & Pech, P.C.*, Circuit Court of St. Louis County, No. 12SL-CC03776-01; *Lemay v. Rocket Lawyer, Inc.*, Circuit Court of St. Louis County, No. 11SL-CC04557. In addition, I performed substantial work on *In re: Life Time Fitness Telephone Consumer Protection Act (TCPA) Litigation*, No. 14-MD-2564, 2015 WL 77337334 (D. Minn. 2015) affirmed by *In re: Life Time Fitness, Inc., Tel. Consumer Protection Act (TCPA) Litig.*, 847 F.3d 619 (8th Cir. 2017) (TCPA Case). My law partner, David T. Butsch, was named as the class counsel from our firm in the *Life Time Fitness* case.

9. Butsch Roberts & Associates LLC is an AV rated law firm which began operating under my law partner, David T. Butsch, on November 1, 2008. The firm specializes in complex civil litigation, with an emphasis on consumer class litigation. The two members of the firm, David

T. Butsch and Christopher E. Roberts, have a combined litigation experience of more than 40 years.

10. My firm is familiar with the laws and rules applicable to this case. My firm is prepared to prosecute this case on behalf of the plaintiff and the putative class. My firm has participated in numerous cases involving the TCPA.

11. This Declaration sets forth a brief summary of the litigation and settlement negotiations that ultimately led to the proposed settlement and the bases upon which Plaintiff's counsel recommend that the Court preliminarily approve the settlement. The following recitation is not all-inclusive, but rather, it is intended to give an overview of the settlement, and the analysis that Plaintiff's counsel incorporated in agreeing to a settlement on behalf of the putative class members. I believe that these facts demonstrate that the settlement is fair, reasonable, and adequate, and should be preliminarily approved by the Court.

Case History

12. This case was filed on January 24, 2023. Since that time the parties have exchanged written discovery and information obtained from Defendant's vendor, who is called VIN Solutions. This section provides a brief overview of the history of the litigation in this matter.

13. After extensive discussions with opposing counsel, Defendant was able to produce data (through VIN Solutions) related to 54 persons who were texted after requesting to no longer receive text messages from Defendant.

14. Mr. Quinn has been incredibly helpful and cooperative throughout this case. He has met with me on multiple occasions, provided documents and information, responded to written

discovery and appeared at mediation. Mr. Quinn has stayed actively involved in the case throughout the entirety of the case.

15. The parties then agreed to mediate the case with Magistrate Judge Gabriel Fuentes. The parties mediated the case with Judge Fuentes on December 20, 2023. Mr. Quinn and I appeared for the mediation via video conferencing. The parties had hard-fought and extensive settlement discussions throughout the afternoon. The parties reached the essential terms of a settlement after mediating the case for multiple hours.

16. After mediation, the parties began drafting the more comprehensive settlement agreement and negotiating certain terms. Ultimately, the parties entered into a final settlement agreement, a copy of which will be provided to the Court as part of Plaintiff's Motion for Preliminary Approval of Class Settlement.

The Settlement Terms, Notice Plan and Estimated Payments

17. For purposes of settlement, the parties agreed to certification of the following Settlement Class:

Those persons who opted out of receiving text messages from or on behalf of JK Buick GMC, Inc. and, thereafter, received one or more text messages from or on behalf of JK Buick GMC, Inc. The settlement class specifically includes, but is limited to, those fifty-four (54) persons identified in the data provided by Defendant to Plaintiff on November 10, 2023.

18. Defendant, through the settlement administrator Atticus Administration, LLC (discussed further below), will create a settlement fund of \$130,000.00, as described in the Settlement Agreement, to pay settlement class members, the cost of settlement administration, a representative service award and attorneys' fees and litigation expenses. Each settlement class member will receive a *pro rata* share of the remaining fund, subject to potential reductions, after

accounting for the cost of settlement administration, a representative service award and Plaintiff's counsel's attorneys' fees and reasonable litigation expenses, as described in the Settlement Agreement. Atticus Administration, LLC has advised that they have agreed to administer the terms of this settlement for \$5,000.00. The parties estimate that each settlement class member who does not opt out will receive approximately \$1,300.00.

19. The Settlement Class members who do not opt out of the settlement will release Defendant (and those acting on their behalf) from certain past claims regarding the text messages at issue in this case and telemarketing communications they received from Defendant. The specific terms of the release are contained in Section 7 of the parties' Settlement Agreement.

20. The parties' counsel have agreed to use Atticus Administration LLC ("Atticus") to serve as the settlement administrator in this matter. I have used Atticus to administer over 10 class action settlements, including cases brought under the TCPA. I also understand Atticus has also served as the settlement administrator in well over 100 class action cases. I find Atticus to be responsive, efficient and diligent in their duties as a class action settlement administrator.

21. Counsel have worked with Atticus to develop a robust notice program with the goal of providing as robust notice as possible to the settlement class members. This process includes mailing a postcard notice to the last known address of each settlement class member, running the address through a national change of address database if the notice is undeliverable and resending the notice to the new address, to the extent such an address is available. In addition, the notice will also be e-mailed to the last known e-mail address in Defendant's records. In other words, many settlement class members may receive notice in two forms so as to ensure they are notified of this settlement. For one settlement class member for whom Defendant does not have a mailing address, a text message notice will be sent to said person.

22. Atticus will also create and maintain a settlement website. The settlement website will include a copy of the operative complaint, settlement agreement, long form settlement class notice and other documents relevant to the settlement. In addition, the settlement will contain important dates and deadlines and will also provide answers to common questions regarding the settlement. The website will also include contact information for Plaintiff's counsel and the settlement administrator.

23. Plaintiff's counsel strongly believes this is an excellent result for the putative class, particularly given the many risk factors discussed below.

Factors Supporting Approval of the Settlement

24. The risk of continuing to pursue this case and not reaching a settlement was and remains substantial. The law is quickly-evolving in TCPA cases and courts often reach conflicting rulings regarding the issues presented in this case. Some of these risks are identified below.

25. For example, Defendant provided information (albeit disputed) that Plaintiff and the putative class members each provided the requisite form of consent to be contacted. *See generally Herrick v. QLess, Inc.*, 216 F. Supp. 3d 816, 818 (E.D. Mich. 2016) (noting that under the TCPA, advertising calls may be placed upon obtaining the recipient's prior express written consent to receive such calls). Should Defendant establish consent, Plaintiff and the settlement class members may not be entitled to any recovery.

26. Relatedly, class certification was not a certainty in light of the consent-related information produced in the case. *See Gordon v. Caribbean Cruise Line, Inc.*, 2019 WL 498937, at *10 (N.D. Ill. Feb. 8, 2019) (different proofs for different purported "consent" information creates various "mini-trials").

27. Finally, Defendant retained experienced and effective counsel in Danielle J. Gould of Burke, Warren, MacKay & Serritella, P.C. Absent settlement, defense counsel would have continued to put forward several grounds for avoiding both liability and class certification.

28. Assuming *arguendo* that class certification could have been obtained and sustained over any appeals or decertification motions, the next hurdle would be to establish class-wide liability and damages.

29. This settlement was not reached until Plaintiff's counsel had conducted extensive analysis and investigation, thoroughly researched the law and facts, and assessed the risks of prevailing at both the district court and appellate levels, and the time and expense of doing so.

30. Plaintiff's counsel's analysis leads to the conclusion that the proposed settlement is a fair and reasonable result for the putative settlement class. In the end, the risk assessment process conducted by counsel resulted in the conclusion that the proposed settlement is the best result for the settlement class. This is true for several reasons, including the risk of losing at the class certification, liability, or damages stages, including on appeal.

31. Based upon these and other factors and considerations, I believe the settlement warrants preliminary approval.

As provided by 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 11, 2024

/s/ Christopher E. Roberts
Christopher E. Roberts #6302857
croberts@butschroberts.com