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

ROBERT KOLINEK, individually and on behalf of a class of similarly situated individuals, *Plaintiff*, v. WALGREEN CO., an Illinois corporation, *Defendant*.	Case No. 13-cv-04806 Hon. Matthew F. Kennelly

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

TABLE OF CONTENTS

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES:

UNITED STATES CIRCUIT COURT OF APPEALS CASES:

UNITED STATES DISTRICT COURT CASES:

STATUTE:

MISCELLANEOUS:

I. INTRODUCTION.

The settlement that forms the basis for Plaintiff Robert Kolinek's ("Kolinek" or "Plaintiff") request for an award of attorneys' fees, expenses and an incentive award is the result of nearly two years of litigation that included extensive briefing, motion practice and oral argument on issues of first impression, formal and informal discovery, and lengthy settlement negotiations—including with the assistance of the Honorable Wayne R. Andersen (ret.) at multiple mediation sessions. Ultimately, the settlement is an exceptional result for the Class, both relative to the relief provided under other TCPA class action settlements and in light of the very real risk that the Class (and Class Counsel) would not recover on their claims at all.

As to the former, under the settlement Defendant Walgreen Co. ("Walgreens") has agreed to (i) create an $11 million non-reversionary settlement fund (from which Class Member claims, the costs of notice and administration, and any award of attorneys' fees and an incentive award will be paid) and (ii) institute significant prospective measures to ensure that its alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA") do not continue into the future. Based on the current and projected rate of claims through the end of the claims period, Plaintiff and Class Counsel reasonably anticipate that each claiming Class Member will receive at least $34 per approved claim. As detailed further below, that amount falls well within the typical range of individual payments in TCPA settlements (i.e., $20–46) and in many instances, is greater than the amounts recovered in those other actions.

With respect to the risks Plaintiff and Class Counsel faced, they were legion. Indeed, Walgreens vigorously defended the legality of its prescription refill reminder calls, arguing that Kolinek had consented to receive the calls and that in any event, no liability could attach because the calls fell within the TCPA's emergency purpose exception—an issue of first impression. The

Court initially agreed with Walgreens that Kolinek had consented to receive the calls and dismissed the case in its entirety. It was only after the Court reversed itself in a rare granting of Plaintiff's motion to reconsider that the case proceeded. And although the Court denied Walgreens' bid for dismissal based on the TCPA's emergency purpose exception, it left the door open to a later dismissal on that basis after further factual development in discovery. Since then, the Federal Communications Commission ("FCC")—the agency responsible for promulgating the rules implementing the TCPA—has indicated its intention to issue an order confirming that similar "prescription refill reminder" calls are, in fact, exempt from liability under the TCPA. Thus, whether as a result of further discovery or agency rule-making, the Class faced the very real risk that their claims here would be extinguished altogether and without recovery.

With that as the backdrop, Plaintiff Kolinek now moves the Court to approve (i) the Fee Award to Class Counsel in the amount of $2,824,200.00 (representing 36% of the Settlement Fund,[1] less the costs of notice and administration and the proposed incentive award), and (ii) an incentive award of $5,000 for his service as Class Representative. Both the requested Fee Award and incentive award are at or below the amounts approved in similar TCPA class actions, are

[1] While the Settlement Agreement provides that Class Counsel will seek no more than 35% of the of the $11 million Settlement Fund (i.e., $3,850,000), Class Counsel understands that per the Seventh Circuit's recent opinions in *Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014) and *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014), the costs of notice and administration may not be included in calculating the benefit conferred on the class, even where there is a true common fund as in this case. Thus, consistent with *Pearson* and *Redman*, Class Counsel here seeks a percentage of the Settlement Fund, less the costs of notice and administration (which will be no more than $3.15 million), and Kolinek's proposed incentive award. The reason the Settlement Agreement provides that Class Counsel will seek no more than 35% of the entire $11 million fund is because at the time they signed the Settlement Agreement, the costs of notice and administration had not been determined. Thus, it made the most sense to simply state the maximum amount that Class Counsel could possibly seek, and if it ended up that they would be seeking less than that amount, that obviously would not be an issue. Now that the Parties are certain as to the costs of notice and administration, Class Counsel has accounted for those costs in making their fee request, and are appropriately seeking a far lesser amount than what is provided for in the Settlement Agreement.

consistent with the market rates for such awards, and reflect the results achieved for the Settlement Class and the substantially greater risks faced in this litigation. For these reasons and as explained further below, pursuant to Federal Rule of Civil Procedure 23(e), Plaintiff Kolinek respectfully requests that the Court approve the requested Fee Award and incentive award.

II. FACTUAL AND PROCEDURAL BACKGROUND.

A brief summary of the underlying facts and law involved in the litigation, which lends context to the reasonableness of the requested Fee Award and incentive award, is outlined below.

A. Nature of the Case.

Plaintiff filed his putative class action complaint against Walgreens on July 3, 2013, asserting a single claim for violations of the TCPA. (Dkt. 1 at ¶¶ 7-8, 28-35.) The TCPA specifically prohibits the use of prerecorded voices in making calls to cellular phones, providing:

> It shall be unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using . . . an artificial or prerecorded voice . . . to any telephone number assigned to . . . a cellular telephone service[.]

47 U.S.C. § 227(b)(1)(A)(iii). The TCPA was enacted more than two decades ago in response to "[v]oluminous consumer complaints about abuses of telephone technology." *Mims v. Arrow Fin. Servs. LLC*, 132 S. Ct. 740, 744 (2012). In so doing, Congress specifically sought to prevent "intrusive nuisance calls" to consumers that it deemed "invasive of privacy," *see id.*, and set statutory damages in the amount of $500 per violation in addition to providing for injunctive relief. *See* 47 U.S.C. §§ 227(b)(3)(A)-(C).

Here, Plaintiff alleges that, in an effort to increase its share of the consumer pharmacy market, Walgreens instituted a program through which it placed "refill reminder" calls featuring artificial or prerecorded voices to millions of consumers who had previously filled prescriptions at a Walgreens store. (Dkt. 1 at ¶¶ 3-4.) The problem—Plaintiff alleges—was that Walgreens did

not first obtain consumers' prior express consent to make the calls, as required by the TCPA. (*Id*. ¶ 5.)

Plaintiff alleges further that he is one such Walgreens customer who filled his prescription at a Walgreens pharmacy as many as ten years ago. (Dkt. 93-1 at 4.) At that time, Plaintiff provided his cellular telephone number to a Walgreens pharmacist for verification purposes only, not to receive refill reminder calls in the future. (*Id.*) Plaintiff further alleges that in or around early 2012, he began receiving prerecorded calls on his cellular telephone asking him to fill his prescriptions at a Walgreens pharmacy. (*Id.*) According to Plaintiff, the calls were part of a telemarketing campaign in which Walgreens called consumers' cellular phones in an attempt to bring consumers to Walgreens pharmacies. (*Id.*) Plaintiff alleges that he and the other consumers who were called never consented to receive the calls; but rather, that Walgreens simply pulled their cell phone numbers from its database of customer contact information. (*Id.*)

B. The Litigation and Work Performed for the Class's Benefit.

Class Counsel was able to secure the proposed settlement here only after nearly two years of contentious litigation—including extensive briefing and argument on issues of first impression—against top-tier defense counsel and one of the largest and most well-financed companies in the world.

Walgreens began its defense by moving to dismiss Plaintiff's complaint in its entirety on the basis of two novel arguments: (i) that Plaintiff consented to receive the calls by providing his cellular telephone number to Walgreens for verification purposes, and (ii) that the calls fell within the TCPA's "emergency purpose" exception, 47 U.S.C. § 227(b)(1)(A). (Dkt. 20 at 5-15.) On February 10, 2014, and after the motion had been fully briefed, the Court dismissed the action in its entirety, holding that under binding FCC declaratory rulings, Plaintiff consented to

receive the calls by providing his cellular telephone number to Walgreens at some point in the past. (Dkt. 38.) Because the Court found Plaintiff had consented by giving Walgreens his cell phone number, it dismissed his complaint and did not rule on the issue of whether the calls fell under the TCPA's emergency purpose exception. (*Id.*)

Due to the novelty of the issue and subsequent clarification by the FCC about what constitutes "consent" for the purposes of the TCPA, Plaintiff moved to reconsider. (Dkt. 40.) Plaintiff agreed with the Court that the FCC orders were binding, but stressed that they did not represent a categorical rule that the provision of a telephone number at a specific time, for a specific purpose, constituted "consent" to receive calls for any purpose, at any time in the future. (*Id.* at 3-7.) Plaintiff also argued that his complaint did not contain all of the facts necessary for Walgreens to assert a consent defense, since there was no evidence that Kolinek provided his telephone number to Walgreens "knowing" he would receive calls at that number in the future. (*Id.* at 7-9.)

On July 7, 2014, over Walgreens' vigorous opposition (dkt. 44), and after the filing of multiple rounds of supplemental briefing and authority (dkts. 46, 48), the Court took the relatively rare step of vacating its earlier ruling dismissing the complaint and granting Plaintiff's motion to reconsider. (Dkt. 51.) In reversing its prior decision, the Court held that it was "clear that the Court erred" and that Walgreens was unable to assert a consent defense on a motion to dismiss based on the allegations regarding Kolinek in the complaint. (*Id.* at 7.) Notwithstanding its holding on the motion to reconsider, the Court advised that the "accuracy of Kolinek's claim . . . must await factual development." (*Id.* at 8.) Later, the Court reiterated that it "intended to convey that although the complaint's relatively spare allegations regarding the pertinent facts

were insufficient to establish the defense, further factual development might require a different conclusion." (Dkt. 66 at 2.)

Then, on July 22, 2014, the Court took up the second novel question raised by Walgreens' motion to dismiss—whether the prerecorded prescription calls fell under the TCPA's "emergency purpose" exception. (Dkt. 57.) After additional supplemental briefing by the Parties (*see* dkts. 53, 54, 58, 61, 63), the Court held that based on the allegations in the complaint, it did not have sufficient information regarding the prerecorded prescription calls to dismiss under the emergency purpose exception. (Dkt. 66.) The Court, however, again concluded that further factual development would be necessary as to the content and nature of the calls to determine if the emergency purpose exception applied. (*Id.*)

Soon after, Walgreens answered Plaintiff's complaint, raising more than twenty affirmative defenses. (Dkt. 68.) Around this time, the Parties began to discuss the possibility of resolving the case and exchanged information related to, *inter alia*, how the prerecorded prescription call program was initiated, how Walgreens obtained and stored individuals' telephone numbers, how the calls were placed, how many calls were placed and Walgreens' process for obtaining customers' purported consent to receive such calls. (Dkt. 93-1 at 7.)

C. Mediations with Judge Andersen and Confirmatory Discovery.

As detailed in Plaintiff's Motion for Preliminary Approval (dkt. 93-1), as briefing on Defendant's motion to dismiss came to a close, the Parties began to discuss the possibility of resolving the case before additional protracted litigation. Over numerous teleconferences, they talked at length about the substantive issues of the case and their perspectives on how it might be resolved. (*See* Declaration of Rafey S. Balabanian ¶ 6 ("Balabanian Decl."), attached as Exhibit 1.) Eventually, the Parties determined to formally mediate the case and, on October 15, 2014,

convened their first mediation with the Honorable Wayne R. Andersen (ret.) of JAMS (Chicago). (*Id*.) With Judge Andersen's guidance, the Parties were able to reach an agreement on some of the material terms of a class-wide settlement, but they did not reach a complete agreement by the end of the day. (*Id.* ¶ 7.) Instead, the session ended with Plaintiff's proposed settlement offer, which Defendant countered one week later. (*Id*.) After additional discussions over the following days, on October 24, 2014, the Parties finalized the material terms of an agreement in principle to resolve the case, subject to additional (confirmatory) discovery. (*Id.* ¶ 8.)

Thereafter, Plaintiff served formal written discovery requests on Walgreens regarding, *inter alia*, how it had obtained customers' telephone numbers, how any alleged consent to be called had been obtained, how the calls were placed, and how Walgreens maintained records of both the phone numbers and any consent to be called. (*Id.* ¶ 9.) After receiving and reviewing Walgreens' written responses and document production, Plaintiff deposed Walgreens' Rule 30(b)(6) designee and Director of Outbound Programs, Christopher Helzerman, on January 16, 2015, to further explore and understand those issues. (*Id*.)

In addition to formal written and oral discovery, the Parties agreed that Walgreens would—subject to a Protective Order (dkt. 79), and other confidentiality measures—provide to a third party records identifying the telephone numbers to which the alleged calls were made to determine which of those numbers were, in fact, assigned to cellular phones (although not identified as such in Walgreens' database) and thus fell within the Settlement Class definition. (*See* Balabanian Decl. ¶ 10.) In that way, the Parties intended to further confirm the scope of the proposed Settlement Class, ensure an appropriate plan for notifying Settlement Class Members of the settlement, and also confirm the fairness and reasonableness of the settlement. (*Id.*) In February 2015, Walgreens provided that data to third-party administrator, Kurtzman Carson

Consultants ("KCC"). (*Id.* ¶ 11.) KCC organized and analyzed the data and ultimately identified the phone numbers called by Walgreens that were assigned to cellular accounts. (*Id*.) However, due to a discrepancy in the manner in which the data was originally extracted from Walgreens' databases, the Parties determined to re-run the analysis for a second time. (*Id.* ¶ 12.) Upon the conclusion of the second analysis, KCC determined that there were approximately 9.2 million cellular telephone numbers to which Walgreens placed calls during the relevant period. (*Id.*)

Notwithstanding their agreement in principle regarding the key terms of the settlement (i.e., fund size, prospective relief, etc.), the Parties were at odds about other aspects of the settlement, namely the plan for providing notice to the Settlement Class. (*Id.* ¶ 13.) As they could not reach a consensus, the Parties determined to proceed with a second mediation before Judge Andersen, during which they were able to resolve the remaining issues. (*Id*. ¶¶ 13-14.)

With that, the Parties were satisfied that the terms of the proposed settlement were fair, reasonable, and adequate, and proceeded with finalizing their written Agreement. (*Id.*¶ 14.) And, on March 26, 2015, the Parties executed the Agreement now before the Court. (*Id.*)

D. The Settlement.

The fruit of Class Counsel's effort is a settlement that this Court preliminarily approved on April 3, 2015 (dkt. 97), and which fully resolves Kolinek's and the Class's claims against Walgreens in this case. The settlement creates a non-reversionary $11 million common fund, from which all Settlement Class Member claims will be paid. (Dkt. 98-1 at ¶ 1.32.) After settlement administration and notice expenses, an incentive award, and attorneys' fees have been paid, each Settlement Class Member who submits an approved claim will receive a *pro rata* share of the Settlement Fund (which, based on the current number and projected rate of claims through the end of the claims period, Class Counsel estimates will be approximately $34 per

claimant).[2] (*Id.* at ¶ 2.1(b).) In addition, the settlement includes wide-ranging prospective relief requiring Walgreens to implement new procedures to ensure that only persons who provide prior express consent receive prerecorded prescription calls to their cellular telephones, including (i) updating its electronic database to identify customer telephone numbers assigned to either a landline or wireless phone, (ii) implementing procedures to confirm the accuracy of customers' communication preferences, and (iii) providing customers the ability to elect to receive, and unsubscribe from, the prerecorded prescription calls online, during the in-store checkout process, over the phone, and by otherwise contacting Walgreens. (*Id.* at ¶¶ 2.2(a)-(c).) All told, the implementation of these changes to its systems will require Walgreens' expenditure of several millions of dollars in hard costs. (Balabanian Decl. ¶ 24.)

To realize the settlement for the benefit of the Class, Class Counsel were required to spend substantial time and effort litigating this case without compensation. This work included briefing numerous motions, including a motion for class certification, a motion to dismiss, supplemental motions on the issue of whether the calls fell under the TCPA's emergency purpose exception, a motion for reconsideration, a motion for protective order, and a motion for preliminary approval of the settlement. (*Id*. ¶ 18.) Class Counsel also conducted formal and informal discovery (including issuing and reviewing the responses to interrogatories and document requests), worked with a third-party administrator to review data compiled from Walgreens' customer databases, and conducted a Rule 30(b)(6) deposition. (*Id*. ¶ 19.)

Additionally, Class Counsel prepared for and engaged in two lengthy mediations with Judge Andersen, along with numerous follow-up arm's-length settlement negotiations with

[2] The deadline for the submission of claims is July 22, 2015. Thus, the exact amount each individual will receive is presently unknown.

Walgreens' counsel. (*Id*. ¶ 20.) After agreeing on the settlement, Class Counsel drafted a comprehensive Settlement Agreement, including notice documents and declarations. (*Id*.)

Throughout the negotiations, Class Counsel worked to ensure that the class notice was as effective as possible, engaging a professional settlement administrator, KCC, to send direct notice to the Settlement Class by e-mail (where available) and postcard. (*Id*. ¶ 21.) The direct notice, in turn, directed Settlement Class Members to www.prescriptioncallsettlement.com, which contains electronic versions of the Claim Form that can be submitted online, important Court documents, and answers to frequently asked questions. (Dkt. 98-1 at ¶ 4.2(d), Exhibits B-D.) Class Counsel have also prepared and presented to the Court the Motion for Preliminary Approval (Dkt. 93-1), and now that the Settlement Class has been notified of the settlement, spoken with dozens of Class Members weekly to answer questions regarding the settlement, aid in the submission of Claim Forms and the like. (Balabanian Decl. ¶ 23.)

III. CLASS COUNSEL'S REQUESTED ATTORNEYS' FEE AND EXPENSE AWARD IS REASONABLE, FALLS WITHIN THE MARKET RATE FOR SIMILAR SERVICES AND THUS, SHOULD BE APPROVED.

In common fund settlements like this one, the Seventh Circuit has "consistently directed district courts to 'do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.'" *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007); *see also In re Synthroid Mktg. Litig.*, 264 F.3d 712, 719 (7th Cir. 2001) ("*Synthroid I*") (cautioning that "any method other than looking to prevailing market rates assures random and potentially perverse results"). Ultimately, "the district court's task when determining the appropriate class action attorneys' fee is to estimate the contingent fee that class counsel would have negotiated with the class at the outset had negotiations with clients having a real stake been feasible." *Wilkins v. HSBC Bank Nevada, N.A.*, No. 14 C 190, 2015 WL

890566, *1 (N.D. Ill. Feb. 27, 2015) (quoting *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7th Cir. 2011)); *see also Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 635 (7th Cir. 2011) ("When attorney[s'] fees are deducted from the class damages, the district court must try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys.").

To determine both the applicable market and corresponding market rate for attorneys' fees, even *ex post*, courts in the Seventh Circuit look at three factors: "(1) actual fee contracts between plaintiffs and their attorneys; (2) data from similar cases where fees were privately negotiated; and (3) information from class-counsel auctions." *In re Capital One Tel. Consumer Prot. Act Litig.*, No. 12 C 10064, 2015 WL 605203, at *11 (N.D. Ill. Feb. 12, 2015) (citing *Synthroid I*, 264 F.3d at 718); *see also Kaplan v. Houlihan Smith & Co.*, No. 12-cv-5134, 2014 WL 2808801 (N.D. Ill. June 20, 2014) ("This Court's task is to consider whether [the amount of attorneys' fees sought] is consistent with a hypothetical *ex ante* bargain for the attorneys' work on this case."). In the TCPA class action market, the market rate of fees is well established.

A. The Market Rate, Exclusive of Risk, is 30% in TCPA Cases Involving Similar Settlement Amounts.

Application of the relevant factors reveals that in a hypothetical *ex ante* bargain with Class Counsel the Settlement Class would have agreed to pay attorneys' fees as a percentage of the non-reversionary common fund at a base rate of 30%, adjusted slightly upwards for risk.

1. Class Counsel have a 33% contingency agreement with Plaintiff.

The first factor looks to whether the plaintiff has an actual agreement with class counsel regarding payment of attorneys' fees. *Capital One*, 2015 WL 605203, at *11 (citing *Synthroid I*, 264 F.3d at 720). Here, Class Counsel's retainer agreement with Plaintiff Kolinek provides for a contingency fee of 33% of any sum recovered. (Balabanian Decl. ¶ 26.) However, in consumer

class actions the courts often views such agreements as being of little value given the plaintiff is not a sophisticated purchaser of legal services. *Capital One*, 2015 WL 605203, at *11. As such, Class Counsel's agreement with Plaintiff suggests the requested fee is reasonable, but is not conclusive proof of what an *ex ante* negotiation with the entire Settlement Class would have been.

2. Awards in other TCPA cases show fee awards are based on a percentage of the recovery starting at 30% and scaling down.

Although the second and third factors contemplate analyzing fees determined *ex ante* or resulting from court-conducted class counsel auctions, such data is "non-existent" in the TCPA class action market, and the district courts have defined the market by looking to how fees were awarded at the end of similar class actions. *See Capital One*, 2015 WL 605203, at *11; *Wilkins*, 2015 WL 890566, at *10. As a general principle, in common fund class actions, the market rate is computed "as a percentage of the benefit conferred upon the class." *Williams v. Gen. Elec. Capital Auto Lease*, No. 94-cv-7410, 1995 WL 765266, at *9 (N.D. Ill. Dec. 26, 1995); *see also Sutton*, 504 F.3d at 693 (directing district court on remand to consult the market for legal services to arrive at a reasonable percentage); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811, 814 (2010) ("Most federal

judges choose to award fees by using the highly discretionary percentage-of-the-settlement method.").[3] TCPA class actions are in accord.

Recently, the Honorable James F. Holderman (ret.) performed an extensive analysis using data compiled from seventy-one post-2010 TCPA class action settlements to determine the appropriate market rate for the award of attorneys' fees. *Capital One*, 2015 WL 605203, at *12. This analysis showed that "the market rate in a typical TCPA class action [is] a sliding-scale fee," that is calculated based on a percentage of the common fund recovery achieved for the benefit of the settlement class. *Craftwood Lumber Co. v. Interline Brands*, No. 11-cv-4462, 2015 WL 2147679, at *4 (N.D. Ill. May 6, 2015) (citing *Capital One*, 2015 WL 605203, at *16 n.13); s*ee also In re: Synthroid Mktg. Litig.*, 235 F.3d 974, 974 (7th Cir. 2003) ("*Synthroid II*") (providing class counsel 30% of the first $10 million of recovery in a common fund case that then decreases because the market rate percentage of recovery "likely falls as the stakes increase").

The market rate (or sliding scale) for the award of fees in TCPA class actions, prior to accounting for the risks associated with a particular case, is as follows:

Recovery	**Fee Percentage**
First $10 million	30%
Next $10 million	25%
$20 - 45 million	20%
Excess above $45 million	15%

[3] While the market conclusively establishes that the percentage of the fund method is the near-exclusive method for determining fees in a TCPA common fund case, the Court nonetheless has the discretion to award attorneys' fees through a lodestar calculation if it so chooses. *See Americana Art China, Co., Inc. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014). However, resort to lodestar is typically only appropriate where a settlement has a very low number of claims and any remaining funds revert to the defendant, thus resulting in the court believing the benefit actually conferred to the class is too low to justify use of a percentage. *Id.* Moreover, the Court need only apply one method of determining fees. *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998) ("[W]e have never ordered the district judge to ensure that the lodestar result mimics that of the percentage approach.").

Capital One, 2015 WL 605203, at *16 n.13; *see also Wilkins,* 2015 WL 890566, *1 (applying the 30% market rate fee recovery to the first $10 million of a TCPA class action settlement, which then decreased on a sliding scale); *Craftwood Lumber*, 2015 WL 605203, at *12 (St. Eve, J.) (same).

Once the appropriate market rate method and percentage are determined, the Seventh Circuit instructs district courts to calculate the applicable attorneys' fee amount by comparing "the ratio of (1) the fee to (2) the fee plus what the class members received." *Redman*, 768 F.3d at 630 (holding that fee awards should solely derive from the realized benefit to the class). In other words, the costs of litigation, notice costs, and incentive awards are not considered as part of the actual benefit conferred to the class and "thus not part of" the calculation. *Capital One*, 2015 WL 605203, at *10 (quoting *Redman*, 768 F.3d at 630).

Applying that methodology here, the settlement provides for an $11,000,000 non-reversionary settlement fund. (Dkt. 98-1 ¶1.32.) Of that amount, notice and settlement administration costs of $3,150,000[4] and an incentive award of $5,000—all totaling $3,155,000—are deducted, leaving $7,845,000 of the relief directly afforded to the Settlement Class. Taking 30% of the amount remaining equals a base market rate attorneys' fee of $2,353,500.

B. The Risk Associated with the Litigation Justifies a Fee Award Equal to 36% of the Realized Benefit to the Settlement Class.

Analysis of a reasonable fee, however, does not stop with the base market percentage. Rather, one of the most important factors weighed in determining the reasonableness of a class action fee award is the risk of non-payment that class counsel faced when embarking on the

[4] The Settlement Administrator has agreed to cap the costs of notice and administration at no more than $3,150,000. (Balabanian Decl. ¶ 22.)

action.[5] *Capital One*, 2015 WL 605203, at *15; *see also Trans Union*, 629 F.3d at 746 (same). A risk premium is warranted because "[t]he greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013). To illustrate this effect of risk on an attorney's willingness to undertake the litigation, "if the market-determined fee for a sure winner were $1 million the market-determined fee for handling a similar suit with only a 50 percent chance of a favorable outcome should be $2 million." *Trans Union*, 629 F.3d at 746. Ultimately, "a higher risk of loss does argue for a higher fee." *Id.*

1. The procedural history shows that the litigation was risky.

In this case, Class Counsel request a Fee Award of $2,824,200, which represents a modest 6% increase over the 30% base suggested by the market rate. That's because, while there is a risk of losing in any case, succeeding in this litigation was by no means a certainty, making a 6% increase over the 30% base market rate both reasonable and entirely justified.

Case in point: this Court at one time dismissed Plaintiff's entire case *with prejudice* based on his voluntary provision of his telephone number to Walgreens. (Dkt. 51.) As reflected in the briefing, the issue of whether the provision of a phone number for any purpose was enough to establish consent to receive calls was hotly contested. The Court originally sided with Walgreens and dismissed Plaintiff's complaint in its entirety. And it was not until Plaintiff took the long-shot of moving to reconsider that the Court agreed that consent for one purpose was not consent for all purposes. *See Caine v. Burge*, 897 F. Supp. 2d 714, 717 (N.D. Ill. 2012) ("Motions to

[5] Risk of nonpayment is one of the factors courts evaluate in determining legal fees, along with the quality of the counsel's performance, the amount of work necessary to resolve the litigation, and the stakes of the case. *Synthroid I*, 264 F.3d at 721. As discussed in Section II.B, *supra*, Class Counsel have devoted significant amounts of time, effort, and resources to the quality work-product involved in this high-stakes litigation, including the novel legal issue of whether the alleged calls fell under the TCPA's emergency purpose exception.

reconsider should be granted only in rare circumstances.") (citation omitted). Despite granting reconsideration, the Court was clear that it viewed Plaintiff's road ahead to be a difficult one, as further factual development may warrant application of Walgreens' consent defense. (Dkt. 51 at 8; Dkt. 66 at 2.) Although Plaintiff's claim ultimately survived the motion to dismiss on the issue of consent, it was a contentious obstacle to overcome and demonstrates that the success in this case was never a certainty.

A second (and far greater) risk confronting Class Counsel was that Walgreens may have been able to successfully claim that the calls were exempt under the TCPA, although not for the reason it originally argued. Plaintiff alleged that Walgreens' calls were "made to consumers who ha[d] previously filled prescriptions at [Walgreens'] pharmacies and purportedly 'remind[ed]' consumers that they should refill their prescriptions," (dkt. 1 at ¶ 4)—and were thus nothing more than "marketing calls." (Dkt. 1 at ¶ 3, dkt. 40, at 4, 5). In response, Walgreens argued that the TCPA's emergency purpose exception applied because the calls were placed to individuals who had prescriptions for maintenance medications (such as cholesterol-lowering medications, diabetes medications, and medications for chronic pulmonary issues), which are vital to the continued health of the patient. (Dkt. 20 at 9-15.) The question was an issue of first impression, and its novelty required the Parties to engage in multiple rounds of briefing and oral argument before the Court's ultimate ruling. (Dkts. 53, 54, 55, 61, 63.) In the end, the Court found that the FCC never interpreted "the [emergency purpose] exception as covering any call to a customer about prescriptions, prescription refills, or anything of the sort, [as] that interpretation would not only bind the Court but would also dictate the conclusion in this case." (Dkt. 66 at 2.)

While the Court was absolutely correct in its ruling, the FCC recently announced a forthcoming order which it indicated will provide a limited exemption from the TCPA when

companies provide "[f]ree calls or texts to . . . remind [consumers] of important medication refills . . . without prior consent." *FCC Strengthens Consumer Protections Against Unwanted Calls and Texts*, FCC News (June 18, 2015), https://www.fcc.gov/document/fcc-strengthens-consumer-protections-against-unwanted-calls-and-texts. While it does not appear that this potential exclusion will be grounded in the emergency purpose exception and it is unclear if it will apply retroactively, it nonetheless demonstrates that it was incredibly risky for Class Counsel to prosecute an issue of first impression that related directly to individuals' health, further supporting a risk enhancer for the Fee Award.

Even if Plaintiff cleared those initial hurdles, Walgreens would undoubtedly challenge a motion for class certification, arguing, *inter alia*, that the consent defense raises individual factual issues, further delaying the possibility of success on the merits. (Balabanian Decl. ¶ 16.) Additionally, if the case proceeded to trial, other roadblocks—such as additional discovery and procurement of expert testimony—would stand in the way of ultimate recovery. (*Id.*) And now that the FCC is planning to implement an order allowing companies like Walgreens to place certain prescription calls without consent, Walgreens would likely have raised the exemption defense again when the FCC issues it order through another motion that will likewise require full briefing, oral argument, and the potential disposition of the case.

Given these risks associated with the litigation, and when viewed in comparison to other similar actions, Class Counsel should be awarded a 6% increase for risk.

2. This case presented far greater risk than typical TCPA cases.

When the risks faced by Class Counsel here are compared to those faced by counsel in other similar TCPA actions, it becomes all the more apparent that a 6% increase to the base 30% market rate is warranted. *Capital One* is particularly instructive on this point. There, the

attorneys requested fees in the amount of 30% of a more than $75 million settlement fund. *Capital One*, 2015 WL 605203, at *9. In analyzing the request and after an extensive analysis on similar fee awards in TCPA class actions, Judge Holderman determined that the case was "only slightly riskier than a typical TCPA class action." *Id.* at *17 (considering "the class members' alleged consent to be called; Rule 23 manageability issues; and potentially forthcoming FCC orders"). Despite that fact, Judge Holderman held that the small risk merited a 6% increase from the base market fee, meaning that class counsel could recover 36% of the first $10 million—instead of 30%—of the common fund benefit to the class. *Id.* at *18 (citing Eisenberg & Miller, *Attorney Fees in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Studies 265 (Tab.8) (2010)).

Shortly thereafter, in *Wilkins*, Judge Holderman considered the appropriateness of a fee award in another TCPA action where the attorneys' asked for more than the sliding-scale percentage market rate provided for in *Capital One. See* 2015 WL 890566, at *9. In denying that request, Judge Holderman found that the case was merely "an average TCPA class action" with "the typical obstacles faced by most TCPA plaintiffs." *Id.* at *11 (finding that the defendant's "consent defense" did not carry "the same weight it did [in] *Capital One*[]" and that the "incentives to settlement . . . would most likely overcome any incentives to litigate"). Because the case provided no substantial risk, the court did not apply a risk enhancer to percentages determined by the base market rate analysis. *Id.*; *see also Craftwood Lumber*, 2015 WL 605203 (refusing on reconsideration to award fee beyond base sliding-scale percentage where legal issues in TCPA fax spam case "were not particularly unique").

Unlike those actions, this case, as discussed above, was far from an "average" TCPA class action. The case involved atypical issues that mounted difficult obstacles—most notably,

novel issues about consent and the question of whether Walgreens' calls fell under the TCPA's emergency purpose exception. This Circuit had never confronted either the consent issue or the emergency purpose argument. Confronting those unique questions made this case inherently riskier than a typical TCPA case—including the "slightly risk[y]" *Capital One* action—and further supports an enhanced fee award.

3. Despite the large risks in this action, the settlement provides a greater benefit than settlements in similar cases.

The risk enhancement becomes even more justified when comparing the benefit this settlement provides to the Settlement Class against the benefits of comparable TCPA settlements. As described in Plaintiff's Motion for Preliminary Approval, the settlement—in terms of tangible monetary relief and improved customer telephone contact practices going forward—is strong, both compared to other similar TCPA actions and when viewed in light of the risks of protracted litigation. In terms of comparables, here the monetary relief of approximately $34 per Settlement Class Member is consistent with other settlements in this area of the law. As noted above, in the prototypical TCPA case—where individuals alleged they received unsolicited telemarketing calls from entities with which they have no connection or relationship—class members generally receive no more than $200. *See, e.g., Kramer v. Autobytel, Inc.*, No. 10-cv-2722, Dkt. 148 (N.D. Cal. 2012) (providing for a cash payment of $100 to each class member); *Weinstein v. The Timberland Co., et al.*, No. 06-cv-00484, Dkt. 93 (N.D. Ill. 2008) (providing for a cash payment of $150 to each class member); *Satterfield v. Simon & Schuster, Inc., et al.,* No. 06-cv-2893, Dkt. 132 (N.D. Cal. 2010) (providing for a cash payment of $175 to each class member); *Lozano v. Twentieth Century Fox Film Corp.*, No. 09-cv-6344, Dkt. 65 (N.D. Ill. 2011) (providing for a cash payment of $200 to each class member). In "mass calling" cases—where tens of millions of individuals and hundreds or even billions of

calls are at issue—class members generally receive between $20 to $40. *See Capital One*, 2015 WL 605203, at *6 (providing for a cash payment of $34.60 to each class member)[6]; *Rose v. Bank of Am. Corp.*, No. 11-cv-02390 (N.D. Cal. 2014) (same). And finally, "direct relationship" TCPA cases, like the instant one, where the person called voluntarily provided their cellular telephone number to the caller, generally result in coupon settlements or small cash awards. *See Kazemi v. Payless Shoesource, Inc.*, No. 09-cv-5142, Dkt. 94 (N.D. Cal. 2012) (providing for a $25 voucher to each class member); *In re Jiffy Lube Int'l, Inc. Text Spam Litig.*, No. 11-md-2261, Dkt. 97 (S.D. Cal. 2013) (providing for a $20 voucher, which could be redeemed for $15 cash after nine-month waiting period).

In the end, the projected individual recovery of $34 alone supports the fact that this settlement represents an exceptional result for the Settlement Class. But when the risks of the action and awards in similar TCPA actions are considered, the requested risk enhancer of 6%—which is equal to the 6% awarded for only a "slightly" risky case—is more than fair in this instance. *See Capital One*, 2015 WL 605203, at *15 (finding that a 6% increase—for a total percentage recovery of 36%—was justified in a TCPA case that was only "slightly riskier" than a typical TCPA case with a more than $75 million settlement fund). Accordingly, the market rate and risk factors assumed in this litigation confirms that an award of $2,824,200 to Class Counsel—i.e., 30% of the realized benefit to the Settlement Class and a 6% risk adjustment increase—is both reasonable and justified.

[6] It bears noting that in *Capital One*, where there were several (arguably harassing) calls to each of the class members seeking to collect on debts owed to the defendant, Judge Holderman found that "the $34.60 per claimant recovery…[did] not seem so miniscule in light of the fact that class members did not suffer any actual damages beyond a few unpleasant phone calls, which they received ostensibly because they did not pay their credit card bills on time." *See* 2015 WL 605203, at *6.

IV. THE INCENTIVE AWARD IS REASONABLE AND WARRANTS APPROVAL.

Kolinek's agreed-upon incentive award of $5,000 for serving as the Class Representative warrants approval as well. Because a plaintiff is essential to any class action, "[i]ncentive awards are justified when necessary to induce individuals to become named representatives." *Synthroid I*, 264 F.3d at 722-23. In deciding whether an incentive award is reasonable, courts look to: (1) "the actions the plaintiff has taken to protect the interests of the class"; (2) "the degree to which the class has benefitted from those actions"; and (3) "the amount of time and effort the plaintiff expended in pursuing the litigation." *Cook*, 142 F.3d at 1016.

These factors are readily satisfied in the instant action. Were it not for Kolinek's efforts and contributions to the litigation—e.g., assisting Class Counsel with their pre-filing investigation, filing the case, and participating in the discovery process—the Settlement Class would not have obtained the substantial benefit conferred by the settlement. (Balabanian Decl. ¶ 28.) Further, the proposed incentive award of $5,000 is in line with those awards approved in similar class action settlements. *See Capital One*, 2015 WL 605203, at *19 (granting requested incentive awards of $5,000 for each named plaintiff in a TCPA class action settlement). Accordingly, the requested incentive award is reasonable and should be approved.

V. CONCLUSION

For the reasons stated above, Plaintiff Robert Kolinek respectfully requests that the Court approve the requested Fee Award in the amount of $2,824,200, approved the requested incentive award of $5,000 to Plaintiff Kolinek, and award such other and further relief the Court deems equitable and just.

Respectfully submitted,

ROBERT KOLINEK, individually and on behalf of a class of similarly situated individuals,

Dated: July 2, 2015

By: /s/ Rafey S. Balabanian
One of Plaintiffs' Attorneys

Jay Edelson
jedelson@edelson.com
Rafey S. Balabanian
rbalabanian@edelson.com
Ryan D. Andrews
randrews@edelson.com
Benjamin H. Richman
brichman@edelson.com
EDELSON PC
350 North LaSalle Street, Suite 1300
Chicago, Illinois 60654
Tel: 312.589.6370
Fax: 312.589.6378

Exhibit 1

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

ROBERT KOLINEK, individually and on behalf of a class of similarly situated individuals, *Plaintiff*, v. WALGREEN CO., an Illinois corporation, *Defendant*.	Case No. 13-cv-04806 Hon. Matthew F. Kennelly

DECLARATION OF RAFEY S. BALABANIAN IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

1. I am an attorney admitted to practice in the United States District Court for the Northern District of Illinois. I am entering this declaration in support of Plaintiff's Motion and Memorandum of Law in Support of Motion for Approval of Attorneys' Fees, Expenses, and Incentive Award. This declaration is based upon my personal knowledge unless otherwise indicated. If called upon to testify as to the matters stated herein, I could and would competently do so.

2. I am a Partner and the General Counsel of the law firm of Edelson PC, which has been retained to represent the named Plaintiff in this matter, Robert Kolinek. I, along with my colleagues Jay Edelson, Ryan D. Andrews, and Benjamin H. Richman, have been appointed Class Counsel in this matter.

The Litigation and Settlement History

3. My Firm's involvement in this case began nearly two years ago with our thorough investigation into a program through which Walgreens placed "refill reminder" calls featuring artificial or prerecorded voices to millions of consumers who had previously filled prescriptions at a Walgreens store. Plaintiff Kolinek was one of the consumers who received Walgreens' "refill reminder" calls.

4. Our investigation ultimately led to the filing of this case, on behalf of Mr. Kolinek, on July 3, 2013 in the United States District Court for the Northern District of Illinois.

5. After extensive briefing at the motion to dismiss stage—during which the Court granted Walgreens' motion to dismiss, then Plaintiff moved to reconsider, then the Court vacated the dismissal and subsequently denied the motion to dismiss in full—Walgreens answered the complaint, and the parties began to discuss the possibility of resolving the case before additional protracted litigation. We exchanged information related to how the prerecorded prescription call program was initiated, how Walgreens obtained and stored individuals' telephone numbers, how the calls were placed, how many calls were placed, and Walgreens' process for obtaining customers' purported consent to receive such calls.

6. Over numerous teleconferences, I had repeated discussions with Walgreens' counsel about the substantive issues of the case and their perspectives on how it might be resolved.

7. On October 15, 2014, I attended the first formal private mediation with the Honorable Wayne R. Andersen (ret.) of JAMS (Chicago). A corporate representative of Walgreens also appeared with counsel from Drinker Biddle & Reath LLP. With Judge Andersen's guidance, we were able to reach an agreement on some of the material terms of a

class-wide settlement, but we did not reach a complete agreement by the end of the day. Instead, the session ended with Plaintiff's proposed settlement offer, which Defendant countered one week later.

8. On October 24, 2014, after additional discussions, we finalized the material terms of an agreement in principle to resolve the case, subject to additional confirmatory discovery.

9. Subsequently, we served formal written discovery on Walgreens and conducted a Rule 30(b)(6) deposition of Walgreens' Director of Outbound Programs, Christopher Helzerman, on January 16, 2015.

10. In addition to formal written and oral discovery, we agreed that Walgreens would—subject to a Protective Order (Dkt. 79) and other confidentiality measures—provide to a third party records identifying the telephone numbers to which the alleged calls were made to determine which of those numbers were, in fact, assigned to cellular phones (although not identified as such in Walgreens' database) and thus fell within the Settlement Class definition. This was done to further confirm the scope of the proposed Settlement Class, ensure an appropriate plan for notifying Settlement Class Members of the settlement, and also confirm the fairness and reasonableness of the settlement.

11. In February 2015, Walgreens provided that data to a third-party administrator, Kurtzman Carson Consultants ("KCC"). KCC organized and analyzed the data and ultimately identified the phone numbers called by Walgreens that were assigned to cellular accounts.

12. Due to a discrepancy in the manner in which the data was originally extracted from Walgreens' databases, however, the analysis was conducted a second time. Upon the conclusion of the second analysis, KCC determined that there were approximately 9.2 million cellular telephone numbers to which Walgreens placed calls during the relevant period of time.

13. Although we agreed in principle regarding the key terms of the settlement (i.e., fund size, prospective relief, etc.), we were still at odds about other aspects of the settlement, namely the plan for providing notice to the Settlement Class. As we could not reach a consensus on that issue, the parties determined to proceed with a second mediation before Judge Andersen.

14. We were able to resolve the remaining issues at the second mediation before Judge Andersen, were satisfied that the terms of the proposed settlement were fair, reasonable, and adequate, and proceeded with finalizing the written Settlement Agreement. Finally, on March 26, 2015, we agreed to execute the Settlement Agreement.

Class Counsel's Experience and the Work Required to Achieve the Beneficial Settlement

15. Attached hereto as Exhibit A is a true and accurate copy of Edelson PC's firm resume. As shown in Exhibit A, Edelson PC has extensive experience in prosecuting class actions and other complex litigation of a similar nature, scope, and complexity. Further, Edelson PC has intimate knowledge of the law in the field of consumer privacy litigation.

16. Based on my experience, I believe that Plaintiff Kolinek had a strong chance of certifying an adversarial class and ultimately succeeding at summary judgment or trial. However, Walgreens would undoubtedly challenge a motion for class certification, arguing, *inter alia,* that the consent defense raises individual factual issues, further delaying the possibility of success on the merits. Additionally, if the case proceeded to trial, other roadblocks—such as additional discovery and procurement of expert testimony—would stand in the way of ultimate recovery.

17. That said, after balancing the strength of the Class's claims against the legal and factual obstacles remaining, both Plaintiff and the attorneys from my Firm working on the case concluded that accepting the relief afforded by the proposed settlement was in the best interest of

the Class. Based on the number of valid claims submitted at the time of filing, Settlement Class Members submitting valid claims are expected to receive approximately $34.

18. To realize the settlement for the benefit of the Settlement Class, my Firm was required to spend substantial time and effort litigating this case without compensation. The work included briefing numerous motions, including a motion for class certification, a motion to dismiss, supplemental motions on the issue of whether the prerecorded prescription calls fell under the TCPA's emergency purpose exception, a motion for reconsideration, a motion for protective order, and a motion for preliminary approval of the settlement.

19. My Firm also conducted formal and informal discovery (including issuing and reviewing the responses to interrogatories and document requests), worked with a third-party administrator to review data compiled from Walgreens' customer databases, and conducted a Rule 30(b)(6) deposition.

20. Additionally, my Firm prepared for and engaged in two lengthy mediations with Judge Andersen, along with numerous follow-up arm's-length settlement negotiations with Walgreens' counsel. After agreeing on the settlement, my Firm then drafted a comprehensive Settlement Agreement, including proposed notice documents and declarations.

21. Throughout the negotiations, my Firm worked to ensure that the class notice was as effective as possible, engaging a professional settlement administrator, KCC, to send direct notice to the Settlement Class by e-mail (where available) and postcard.

22. The total cost for notice and administration expenses is expected to be, but will not exceed, $3,150,000.

23. Now that the Settlement Class has been notified of the settlement, my Firm has spoken with dozens of Settlement Class Members weekly to answer questions regarding the settlement and aid in the submission of Claim Forms.

24. In addition to the direct monetary relief afforded to the Settlement Class, the settlement also provides for the implementation of numerous changes to Walgreens' systems. All told, the implementation of these changes will require Walgreens to expend several millions of dollars in hard costs.

Plaintiff Kolinek's Efforts in the Litigation

25. I believe that Mr. Kolinek, as Class Representative, dutifully represented the interests of the Class in this case.

26. Mr. Kolinek agreed to act as the named plaintiff and putative class representative in this action, and his retainer agreement provides for a contingency fee of 33% of any sum recovered as an outcome of this litigation.

27. Throughout the litigation process, Mr. Kolinek made clear that he understood that serving as a named plaintiff and putative class representative carried significant responsibilities, and in that role, he would be required to pursue the action not only on his own behalf, but, more importantly, on behalf of the putative class he sought to represent.

28. Were it not for Mr. Kolinek's efforts and contributions to the litigation—e.g., assisting our Firm with our pre-filing investigation, filing the case, and participating in the discovery process—the Settlement Class would not have obtained the substantial benefit conferred by the settlement.

29. Neither Mr. Kolinek's retention agreement nor his participation in this action was in any way conditioned on his receiving any benefit based on his involvement. Mr. Kolinek was

not promised anything in exchange for his service as a named plaintiff or putative class representative, or for his execution of the Settlement Agreement. Mr. Kolinek has also indicated his desire to continue protecting the interests of the Settlement Class through settlement or continued litigation.

Attachments

30. Attached hereto as Exhibit 1-A is a true and accurate copy of the Firm Resume of Edelson PC.

* * *

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of July at Chicago, Illinois.

/s/ Rafey S. Balabanian

Exhibit 1-A

EDELSON PC FIRM RESUME

EDELSON PC is a plaintiffs' class action and commercial litigation firm with attorneys in Illinois and California.

Our attorneys have been recognized as leaders in these fields by state and federal legislatures, national and international media groups, the courts, and our peers. Our reputation for leadership in class action litigation has led state and federal courts to appoint us lead counsel in many high-profile class actions, including privacy suits against comScore, Netflix, Time, Microsoft, and Facebook; numerous Telephone Consumer Protection Act ("TCPA") cases against companies such as Google, Twentieth Century Fox, and Simon & Schuster; class actions against Citibank, Wells Fargo, and JP Morgan Chase related to reductions in home equity lines of credit; fraudulent marketing cases against software companies such as Symantec; mobile content class actions against all major cellular telephone carriers; the Thomas the Tank Engine lead paint class actions; and the tainted pet food litigation. We have testified before the United States Senate on class action issues and have repeatedly been asked to work on federal and state legislation involving cellular telephony, privacy, and other issues. Our attorneys have appeared on dozens of national and international television and radio programs to discuss our cases and class action and consumer protection issues more generally. Our attorneys speak regularly at seminars on consumer protection and class action issues, lecture on class actions at law schools, and serve as testifying experts in cases involving class action and consumer issues.

PLAINTIFFS' CLASS AND MASS ACTION PRACTICE GROUP

EDELSON PC is a leader in plaintiffs' class and mass action litigation, with a particular emphasis on consumer technology class actions, and has been called a "class action 'super firm.'" (Decalogue Society of Lawyers, Spring 2010.) As recognized by federal courts nationwide, our firm has an "extensive histor[y] of experience in complex class action litigation, and [is a] well-respected law firm[] in the plaintiffs' class action bar." *In re Pet Food Prod. Liab. Litig.*, MDL Dkt. No. 1850, No. 07-2867 (NLH) (D.N.J. Nov. 18, 2008). A leading arbitrator concurred, finding that Edelson was "extraordinarily experienced" in "consumer protection class actions generally," including "technology consumer protection class action[s]."

In appointing our firm interim co-lead in one of the most high profile cases in the country, a federal court pointed to our ability to be "vigorous advocates, constructive problem-solvers, and civil with their adversaries." *In Re JPMorgan Chase Home Equity Line of Credit Litig.*, No. 10 C 3647 (N.D. Ill. July 16, 2010). After hard fought litigation, that case settled, resulting in the reinstatement of between $3.2 billion and $4.7 billion in home credit lines.

We have been specifically recognized as "pioneers in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue." *In re Facebook Privacy Litig.*, No. C 10-02389, Dkt. 69 at 5 (N.D. Cal. Dec. 10, 2010) (order appointing the firm interim co-lead of privacy class action); *see also In re Netflix Privacy Litig.*, No. 11-cv-00379, Dkt. 59 at 5 (N.D. Cal. Aug. 12, 2011) (appointing us the sole lead counsel due, in part, to our "significant and particularly specialized expertise in electronic privacy litigation and class actions[.]").

Similarly, as recognized by a recent federal court, our firm has "pioneered the application of the TCPA to text-messaging technology, litigating some of the largest consumer class actions in the country on this issue." *Ellison v Steve Madden, Ltd.*, No. 11-cv-5935 PSG, Dkt. 73 at 9 (C.D. Cal. May 7, 2013).

We have several sub-specialties within our plaintiffs' class action practice:

PRIVACY/DATA LOSS

Data Loss/Unauthorized Disclosure of Data

We have litigated numerous class actions involving issues of first impression against Facebook, Apple, Netflix, Sony, Redbox, Pandora, Sears, Storm 8, Google, T-Mobile, Microsoft, and others involving failures to protect customers' private information, security breaches, and unauthorized sharing of personal information with third parties. Representative settlements and ongoing cases include:

- *Dunstan v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.): Lead counsel in certified class action accusing Internet analytics company of improper data collection practices. The court has finally approved a $14 million settlement.

- *Resnick v. Avmed*, No. 10-cv-24513 (S.D. Fla.): Lead counsel in data breach case filed against health insurance company. Obtained landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred. Case also resulted in the first class action settlement in the country to provide data breach victims with monetary payments irrespective of identity theft.

- *In re Netflix Privacy Litigation*, No. 11-cv-00379 (N.D. Cal.): Sole lead counsel in suit alleging that defendant violated the Video Privacy Protection Act by illegally retaining customer viewing information. Case resulted in a $9 million dollar *cy pres* settlement that has been finally approved (pending appeal).

- *Halaburda v. Bauer Publishing Co.*, No. 12-cv-12831 (E.D. Mich.); *Grenke v. Hearst Communications, Inc.*, No. 12-cv-14221 (E.D. Mich.); *Fox v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich.): Consolidated actions brought under Michigan's Video Rental Privacy Act, alleging unlawful disclosure of subscribers' personal information. In a ground-breaking decision, the court denied three motions to dismiss finding that the magazine publishers were covered by the act and that the illegal sale of personal information triggers an automatic $5,000 award to each aggrieved consumer.

- *Standiford v. Palm*, No. 09-cv-05719-LHK (N.D. Cal.): Sole lead counsel in data loss class action, resulting in $640,000 settlement.

- *In re Zynga Privacy Litig.*, No. 10-cv-04680 (N.D. Cal.): Appointed co-lead counsel in suit against gaming application designer for the alleged unlawful disclosure of its users' personally identifiable information to advertisers and other third parties.

- *In re Facebook Privacy Litigation*, No. 10-cv-02389 (N.D. Cal.): Appointed co-lead counsel in suit alleging that Facebook unlawfully shared its users' sensitive personally identifiable information with Facebook's advertising partners.

- *In re Sidekick Litigation*, No. C 09-04854-JW (N.D. Cal.): Co-lead counsel in cloud computing data loss case against T-Mobile and Microsoft. Settlement provided the class with potential settlement benefits valued at over $12 million.

- *Desantis v. Sears*, No. 08 CH 00448 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in injunctive settlement alleging national retailer allowed purchase information to be publicly available through the Internet.

Telephone Consumer Protection Act

Edelson has been at the forefront of TCPA litigation for over six years, having secured the groundbreaking *Satterfield* ruling in the Ninth Circuit applying the TCPA to text messages. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009). In addition to numerous settlements totaling over $100 million in relief to consumers, we have over two dozen putative TCPA class actions pending against companies including Santander Consumer USA, Inc., Walgreen Co., Path, Inc., Nuance Communications, Inc., Stonebridge Life Insurance, Inc., GEICO, DirectBuy, Inc., and RCI, Inc. Representative settlements and ongoing cases include:

- *Rojas v CEC*, No. 10-cv-05260 (N.D. Ill.): Lead counsel in text spam class action that settled for $19,999,400.

- *In re Jiffy Lube Int'l Text Spam Litigation*, No. 11-md-2261, 2012 WL 762888 (S.D. Cal.): Co-lead counsel in $35 million text spam settlement.

- *Ellison v Steve Madden, Ltd.*, No. cv 11-5935 PSG (C.D. Cal.): Lead counsel in $10 million text spam settlement.

- *Kramer v. B2Mobile*, No. 0-cv-02722-CW (N.D. Cal.): Lead counsel in $12.2 million text spam settlement.

- *Pimental v. Google, Inc*., No. 11-cv-02585 (N.D. Cal.): Lead counsel in class action alleging that defendant co-opted group text messaging lists to send unsolicited text messages. $6 million settlement provides class members with an unprecedented $500 recovery.

- *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.): Lead counsel in $10 million text spam settlement.

- *Miller v. Red Bull*, No. 12-CV-04961 (N.D. Ill.): Lead counsel in $6 million text spam settlement.

- *Woodman v. ADP Dealer Services*, No. 2013 CH 10169 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in $7.5 million text spam settlement.

- *Lockett v. Mogreet, Inc.*, No 2013 CH 21352 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in $16 million text spam settlement.

- *Lozano v. 20th Century Fox*, No. 09-cv-05344 (N.D. Ill.): Lead counsel in class action alleging that defendants violated federal law by sending unsolicited text messages to cellular telephones of consumers. Case settled for $16 million.

- *Satterfield v. Simon & Schuster*, No. C 06 2893 CW (N.D. Cal.): Co-lead counsel in in $10 million text spam settlement.

- *Weinstein v. Airit2me, Inc*., No. 06 C 0484 (N.D. Ill): Co-lead counsel in $7 million text spam settlement.

CONSUMER TECHNOLOGY

Fraudulent Software

In addition to the settlements listed below, EDELSON PC has consumer fraud cases pending in courts nationwide against companies such as McAfee, Inc., Avanquest North America Inc., PC Cleaner, AVG, iolo Technologies, LLC, among others. Representative settlements include:

- *Drymon v. Cyberdefender*, No. 11 CH 16779 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $9.75 million.

- *Gross v. Symantec Corp.*, No. 12-cv-00154-CRB (N.D. Cal.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $11 million.

- *LaGarde v. Support.com, Inc.*, No. 12-cv-00609-JSC (N.D. Cal.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $8.59 million.

- *Ledet v. Ascentive LLC*, No. 11-CV-294-PBT (E.D. Pa.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $9.6 million.

- *Webb v. Cleverbridge, Inc.*, No. 1:11-cv-04141 (N.D. Ill.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $5.5 million.

Video Games

EDELSON PC has litigated cases video-game related cases against Activision Blizzard Inc., Electronic Arts, Inc., Google, and Zenimax Media, Inc., and has active litigation pending, including:

- *Locke v. Sega of America*, No. 13-cv-01962-MEJ (N.D. Cal.): Pending putative class action alleging that Sega of America and Gearbox Software released video game trailer that falsely represented the actual content of the game.

MORTGAGE & BANKING

EDELSON PC has been at the forefront of class action litigation arising in the aftermath of the federal bailouts of the banks. Our suits include claims that certain banks unlawfully suspended home credit lines based on pre-textual reasons, and that certain banks have failed to honor loan modification programs. We achieved the first federal appellate decision in the country recognizing the right of borrowers to enforce HAMP trial plans under state law. The court noted that "[p]rompt resolution of this matter is necessary not only for the good of the litigants but for the good of the Country." *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 586 (7th Cir. 2012) (Ripple, J., concurring). Our settlements have restored billions of dollars in home credit lines to people throughout the country. Representative cases and settlements include:

- *In re JP Morgan Chase Bank Home Equity Line of Credit Litig.*, No. 10-cv-3647 (N.D. Ill.): Court appointed interim co-lead counsel in nationwide putative class action alleging illegal suspensions of home credit lines. Settlement restored between $3.2 billion and $4.7 billion in credit to the class.

- *Hamilton v. Wells Fargo Bank, N.A.*, No. 09-cv-04152-CW (N.D. Cal.): Lead counsel in class actions challenging Wells Fargo's suspensions of home equity lines of credit. Nationwide settlement restores access to over

$1 billion in credit and provides industry leading service enhancements and injunctive relief.

- *In re Citibank HELOC Reduction Litig.*, No. 09-cv-0350-MMC (N.D. Cal.): Lead counsel in class actions challenging Citibank's suspensions of home equity lines of credit. The settlement restored up to $653,920,000 worth of credit to affected borrowers.

- *Wigod v. Wells Fargo*, No. 10-cv-2348 (N.D. Ill.): In ongoing putative class action, obtained first appellate decision in the country recognizing the right of private litigants to sue to enforce HAMP trial plans.

GENERAL CONSUMER PROTECTION CLASS ACTIONS

We have successfully prosecuted countless class actions against computer software companies, technology companies, health clubs, dating agencies, phone companies, debt collectors, and other businesses on behalf of consumers. In addition to the settlements listed below, EDELSON PC have litigated consumer fraud cases in courts nationwide against companies such as Motorola Mobility, Stonebridge Benefit Services, J.C. Penney, Sempris LLC, and Plimus, LLC. Representative settlements include:

Mobile Content

We have prosecuted over 100 cases involving mobile content, settling numerous nationwide class actions, including against industry leader AT&T Mobility, collectively worth over a hundred million dollars.

- *McFerren v. AT&T Mobility, LLC*, No. 08-CV-151322 (Fulton Cnty. Super. Ct., Ga.): Lead counsel class action settlement involving 16 related cases against largest wireless service provider in the nation. "No cap" settlement provided virtually full refunds to a nationwide class of consumers who alleged that unauthorized charges for mobile content were placed on their cell phone bills.

- *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving 27 related cases alleging unauthorized mobile content charges. Case settled for $36 million.

- *Gray v. Mobile Messenger Americas, Inc.*, No. 08-CV-61089 (S.D. Fla.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Case settled for $12 million.

- *Parone v. m-Qube, Inc.*, No. 08 CH 15834 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving over 2 dozen cases alleging

the imposition of unauthorized mobile content charges. Case settled for $12.254 million.

- *Williams v. Motricity*, *Inc.*, No. 09 CH 19089 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving 24 cases alleging the imposition of unauthorized mobile content charges. Case settled for $9 million.

- *VanDyke v. Media Breakaway, LLC*, No. 08 CV 22131 (S.D. Fla.): Lead counsel in class action settlement alleging unauthorized mobile content charges. Case settled for $7.6 million.

- *Gresham v. Cellco Partnership*, No. BC 387729 (L.A. Super. Ct., Cal.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Settlement provided class members with full refunds.

- *Abrams v. Facebook, Inc.*, No. 07-05378 (N.D. Cal.): Lead counsel in injunctive settlement concerning the transmission of allegedly unauthorized mobile content.

Deceptive Marketing

- *Van Tassell v. UMG*, No. 1:10-cv-2675 (N.D. Ill.): Lead counsel in negative option marketing class action. Case settled for $2.85 million.

- *McK Sales Inc. v. Discover Bank*, No. 10-cv-02964 (N.D. Ill.): Lead counsel in class action alleging deceptive marketing aimed at small businesses. Case settled for $6 million.

- *Farrell v. OpenTable*, No. 11-cv-01785 (N.D. Cal.): Lead counsel in gift certificate expiration case. Settlement netted class over $3 million in benefits.

- *Ducharme v. Lexington Law*, No. 10-cv-2763 (N.D. Cal): Lead counsel in CROA class action. Settlement resulted in over $6 million of benefits to the class.

- *Pulcini v. Bally Total Fitness Corp*., No. 05 CH 10649 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in four class action lawsuits brought against two health clubs and three debt collection companies. A global settlement provided the class with over $40 million in benefits, including cash payments, debt relief, and free health club services.

- *Kozubik v. Capital Fitness, Inc.*, 04 CH 627 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in state-wide suit against a leading health club chain, which settled in 2004, providing the over 150,000 class members with between

$11 million and $14 million in benefits, consisting of cash refunds, full debt relief, and months of free health club membership.

- *Kim v. Riscuity*, No. 06 C 01585 (N.D. Ill.): Co-lead counsel in suit against a debt collection company accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with full debt relief and return of all money collected.

- *Jones v. TrueLogic Financial Corp.*, No. 05 C 5937 (N.D. Ill.): Co-lead counsel in suit against two debt collectors accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with approximately $2 million in debt relief.

- *Fertelmeyster v. Match.com*, No. 02 CH 11534 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in a state-wide class action suit brought under Illinois consumer protection statutes. The settlement provided the class with a collective award with a face value in excess of $3 million.

- *Cioe v. Yahoo!, Inc.*, No. 02 CH 21458 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in a state-wide class action suit brought under state consumer protection statutes. The settlement provided the class with a collective award with a face value between $1.6 million and $4.8 million.

- *Zurakov v. Register.com*, No. 01-600703 (N.Y. Sup. Ct., N.Y. Cnty.): Co-lead counsel in a class action brought on behalf of an international class of over one million members against Register.com for its allegedly deceptive practices in advertising on "coming soon" pages of newly registered Internet domain names. Settlement required Register.com to fully disclose its practices and provided the class with relief valued in excess of $17 million.

PRODUCTS LIABILITY CLASS ACTIONS

We have been appointed lead counsel in state and federal products liability class settlements, including a $30 million settlement resolving the "Thomas the Tank Engine" lead paint recall cases and a $32 million settlement involving the largest pet food recall in the history of the United States and Canada. Representative settlements include:

- *Barrett v. RC2 Corp.*, No. 07 CH 20924 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in lead paint recall case involving Thomas the Tank toy trains. Settlement is valued at over $30 million and provided class with full cash refunds and reimbursement of certain costs related to blood testing.

- *In re Pet Food Products Liability Litig.*, No. 07-2867 (D.N.J.): Part of mediation team in class action involving largest pet food recall in United

States history. Settlement provided $24 million common fund and $8 million in charge backs.

INSURANCE CLASS ACTIONS

We have prosecuted and settled multi-million dollar suits against J.C. Penney Life Insurance for allegedly illegally denying life insurance benefits under an unenforceable policy exclusion and against a Wisconsin insurance company for terminating the health insurance policies of groups of self-insureds. Representative settlements include:

- *Holloway v. J.C. Penney*, No. 97 C 4555 (N.D. Ill.): One of the primary attorneys in a multi-state class action suit alleging that the defendant illegally denied life insurance benefits to the class. The case settled in or around December 2000, resulting in a multi-million dollar cash award to the class.

- *Ramlow v. Family Health Plan* (Wisc. Cir. Ct., WI): Co-lead counsel in a class action suit challenging defendant's termination of health insurance to groups of self-insureds. The plaintiff won a temporary injunction, which was sustained on appeal, prohibiting such termination and eventually settled the case ensuring that each class member would remain insured.

MASS/CLASS TORT CASES

Our attorneys were part of a team of lawyers representing a group of public housing residents in a suit based upon contamination related injuries, a group of employees exposed to second-hand smoke on a riverboat casino, and a class of individuals suing a hospital and national association of blood banks for failure to warn of risks related to blood transfusions. Representative settlements include:

- *Aaron v. Chicago Housing Authority*, No. 99 L 11738 (Cir. Ct. Cook Cnty., Ill.): Part of team representing a group of public housing residents bringing suit over contamination-related injuries. Case settled on a mass basis for over $10 million.

- *Januszewski v. Horseshoe Hammond*, No. 2:00CV352JM (N.D. Ind.): Part of team of attorneys in mass suit alleging that defendant riverboat casino caused injuries to its employees arising from exposure to second-hand smoke.

The firm's cases regularly receive attention from local, national, and international media. Our cases and attorneys have been reported in the Chicago Tribune, USA Today, the Wall Street Journal, the New York Times, the LA Times, by the Reuters and UPI news services, and BBC International. Our attorneys have appeared on numerous national television and radio programs, including ABC World News, CNN, Fox News, NPR, and CBS Radio, as well as television and

radio programs outside of the United States. We have also been called upon to give congressional testimony and other assistance in hearings involving our cases.

GENERAL COMMERCIAL LITIGATION

Our attorneys have handled a wide range of general commercial litigation matters, from partnership and business-to-business disputes to litigation involving corporate takeovers. We have handled cases involving tens of thousands of dollars to "bet the company" cases involving up to hundreds of millions of dollars. Our attorneys have collectively tried hundreds of cases, as well as scores of arbitrations and mediations.

OUR ATTORNEYS

JAY EDELSON is the founder and Managing Partner of EDELSON PC. He has been recognized as one of the nation's leading class action lawyers, especially in the areas of privacy, technology, and consumer advocacy, by his peers, the media, state and federal legislators, academia, and courts throughout the country.

Jay has been appointed lead counsel in numerous state, federal, and international class actions, resulting in hundreds of millions of dollars for his clients. He is regularly asked to weigh in on federal and state legislation involving his cases. He testified to the U.S. Senate about the largest pet food recall in the country's history and is advising state and federal politicians on consumer issues relating to the recent federal bailouts, as well as technology issues, such as those involving mobile marketing. In addition to handling all types of complex commercial litigation, Jay also consults with companies, providing legal and strategic advice.

Jay has litigated class actions that have established precedent concerning the ownership rights of domain name registrants, the applicability of consumer protection statutes to Internet businesses, and the interpretation of numerous other state and federal statutes including the Telephone Consumer Protection Act and the Video Privacy Protection Act. As lead counsel, he has also secured settlement in cases of first impression involving Facebook, Microsoft, AT&T, and countless others, collectively worth hundreds of millions of dollars.

In addition to technology based litigation, Jay has been involved in a number of high-profile "mass tort" class actions and product recall cases, including cases against Menu Foods for selling contaminated pet food, a $30 million class action settlement involving the Thomas the Tank Engine toy train recall, and suits involving damages arising from second-hand smoke.

In 2009, Jay was named one of the top 40 Illinois attorneys under 40 by the Chicago Daily Law Bulletin. In that award, Jay was heralded for his history of bringing and winning landmark cases and for his "reputation for integrity" in the "rough and tumble class action arena." In the same award, he was called "one of the best in the country" when it "comes to legal strategy and execution." Also in 2009, Jay was included in the American Bar Association's "24 hours of Legal Rebels" program, where he was dubbed one of "the most creative minds in the legal profession" for his views of associate training and firm management. In 2010, he was presented with the Annual Humanitarian Award in recognition of his "personal integrity, professional

achievements, and charitable contributions" by the Hope Presbyterian Church. Starting in 2011, he has been selected as an Illinois Super Lawyer and, separately, as a top Illinois class action lawyer by Benchmark Plaintiff. In 2014, Jay was named a "Titan of the Plaintiffs Bar" by Law360.

Jay is frequently asked to participate in legal seminars and discussions regarding the cases he is prosecuting, including serving as panelist on national symposium on tort reform and, separately, serving as a panelist on litigating high-profile cases. He has also appeared on dozens of television and radio programs to discuss his cases. He has guest lectured at Northwestern University Law School and The John Marshall Law School on consumer and class action issues, and has co-chaired a 2-day national symposium on class action issues. He has been an adjunct professor, teaching a seminar on class action litigation at the Chicago-Kent College of Law since 2010.

Jay is a graduate of Brandeis University and the University of Michigan Law School.

RYAN D. ANDREWS is a Partner at EDELSON PC. He presently leads the firm's complex case resolution and appellate practice group, which oversees the firm's class settlements, class notice programs, and briefing on issues of first impression.

Ryan has been appointed class counsel in numerous federal and state class actions nationwide that have resulted in over $100 million dollars in refunds to consumers, including: *Satterfield v. Simon & Schuster*, No. C 06 2893 CW (N.D. Cal.): *Ellison v Steve Madden, Ltd.*, No. cv 11-5935 PSG (C.D. Cal.); *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.); *Lozano v. 20th Century Fox*, No. 09-cv-05344 (N.D. Ill.): *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cir. Ct. Cook Cnty., Ill.); and *Lofton v. Bank of America Corp*., No. 07-5892 (N.D. Cal.).

Representative reported decisions include: *Lozano v. Twentieth Century Fox*, 702 F. Supp. 2d 999 (N.D. Ill. 2010), *Satterfield v. Simon & Schuster, Inc.* 569 F.3d 946 (9th Cir. 2009), *Kramer v. Autobytel, Inc.*, 759 F. Supp. 2d 1165 (N.D. Cal. 2010); *In re Jiffy Lube Int'l Text Spam Litig.*, 847 F. Supp. 2d 1253 (S.D. Cal. 2012); *Lee v. Stonebridge Life Ins. Co*., 289 F.R.D. 292 (N.D. Cal. 2013); and *Kristensen v. Credit Payment Servs*., 12 F. Supp. 3d 1292 (D. Nev. Mar. 26, 2014).

Ryan graduated from the University of Michigan, earning his B.A., with distinction, in Political Science and Communications. Ryan received his J.D. with High Honors from the Chicago-Kent College of Law and was named Order of the Coif. Ryan has served as an Adjunct Professor of Law at Chicago-Kent, teaching a third-year seminar on class actions. While in law school, Ryan was a Notes & Comments Editor for The Chicago-Kent Law Review, earned CALI awards for the highest grade in five classes, and was a teaching assistant for both Property Law and Legal Writing courses. Ryan externed for the Honorable Joan B. Gottschall in the United State District Court for the Northern District of Illinois.

Ryan is licensed to practice in Illinois state courts, the United States District Court for the Northern District of Illinois, the U.S. Court of Appeals for the Seventh Circuit, and the U.S.

Court of Appeals for the Ninth Circuit.

RAFEY S. BALABANIAN is a Partner and General Counsel at EDELSON PC. Rafey's practice focuses upon a wide range of complex consumer class action litigation, as well as general business litigation. In the class action context, Rafey has extensive experience both prosecuting and defending class actions.

On the plaintiff's side, Rafey has been appointed lead counsel in numerous class actions, and has achieved landmark settlements involving the telecom industry worth hundreds of millions of dollars, including nationwide settlements in the cases *Pimental, et al. v. Google, Inc.*, No. 11-cv-2585 (N.D. Cal.); *Van Dyke v. Media Breakaway, LLC*, No. 08-cv-22131 (S.D. Fla.); *Williams v. Motricity, Inc., et al*., No. 09 CH 19089 (Cir. Ct. Cook Cnty., Ill.); and *Walker v. OpenMarket, Inc., et al*., No. 08 CH 40592 (Cir. Ct. Cook Cnty., Ill.).

Rafey's plaintiff's class action practice also focuses on consumer privacy issues and some of his most notable accomplishments include nationwide settlements reached with companies such as Netflix (*In re Netflix Privacy Litig.*, No. 11-cv-379 (N.D. Cal.)) and RockYou (*Claridge v. RockYou, Inc.*, No. 09-cv-6030 (N.D. Cal.)). Rafey also led the effort to secure adversarial class certification of what is believed to be the largest privacy class action in the history of U.S. jurisprudence in the case of *Dunstan, et al. v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.).

On the business side, Rafey has counseled clients ranging from "emerging technology" companies, real estate developers, hotels, insurance companies, lenders, shareholders and attorneys. He has successfully litigated numerous multi-million dollar cases, including several "bet the company" cases. And, with respect to the defense of class action, Rafey's practice focuses mainly on the defense of corporate clients facing wage and hour lawsuits brought under the Fair Labor Standards Act.

Rafey received his J.D. from the DePaul University College of Law in 2005. While in law school, he received a certificate in international and comparative law. A native of Colorado, Rafey received his B.A. in History, with distinction, from the University of Colorado – Boulder in 2002.

CHRISTOPHER L. DORE is a Partner at EDELSON PC where he focuses his practice on emerging consumer technology issues, with his cases relating to online fraud, deceptive marketing, consumer privacy, negative option membership enrollment, and unsolicited text messaging. Chris is also a member of the firm's Incubation and Startup Development Group wherein he consults with emergent businesses.

Chris has been appointed class counsel in multiple class actions, including one of the largest text-spam settlements under the Telephone Consumer Protection Act, groundbreaking issues in the mobile phone industry and fraudulent marketing, as well as consumer privacy. *See Kramer v. Autobytel, Inc.*, No. 10-cv-02722-CW (N.D. Cal.); *Turner v. Storm8, LLC*, No. 09-cv-05234 (N.D. Cal.); *Standiford v Palm, Inc.*, No. 09-cv-05719-LHK (N.D. Cal.); and *Espinal v. Burger King Corp.*, No. 09-cv-20982 (S.D. Fla.). In addition, Chris has achieved groundbreaking court decisions protecting consumer rights. Representative reported decisions include: *Claridge v.*

RockYou, Inc., 785 F. Supp. 2d 855 (N.D. Cal. 2011); *Kramer v. Autobytel, Inc*., 759 F. Supp. 2d 1165 (N.D. Cal. 2010); and *Van Tassell v. United Marketing Group, LLC*, 795 F. Supp. 2d 770 (N.D. Ill. 2011). In total, his suits have resulted in hundreds of millions of dollars to consumers.

Outside of consumer class actions, Chris actively advises technology related startups, including providing compliance and marketing guidance, as well as hands-on concept and business development.

Prior to joining EDELSON PC, Chris worked for two large defense firms in the areas of employment and products liability. Chris graduated *magna cum laude* from The John Marshall Law School, where he served as the Executive Lead Articles for the Law Review, as well as a team member for the D.M. Harish International Moot Court Competition in Mumbai, India. Chris has since returned to his alma mater to lecture on current issues in class action litigation and negations.

Before entering law school, Chris received his Masters degree in Legal Sociology, graduating *magna cum laude* from the International Institute for the Sociology of Law, located in Onati, Spain. Chris received his B.A. in Legal Sociology from the University of California, Santa Barbara.

BENJAMIN H. RICHMAN is a Partner at EDELSON PC. He handles plaintiffs'-side consumer class actions, focusing mainly on technology-related cases, represents corporate defendants in class actions, and handles general commercial litigation matters.

On the plaintiff's side, Ben has brought industry-changing lawsuits involving the marketing practices of the mobile industry, print and online direct advertisers, and Internet companies. He has successfully prosecuted cases involving privacy claims and the negligent storage of consumer data. His suits have also uncovered complex fraudulent methodologies of Web 2.0 companies, including the use of automated bots to distort the value of consumer goods and services. In total, his suits have resulted in hundreds of millions of dollars to consumers.

On the defense side, Ben has represented large institutional lenders in the defense of employment class actions. He also routinely represents technology companies in a wide variety of both class action defense and general commercial litigation matters.

Ben received his J.D. from The John Marshall Law School, where he was an Executive Editor of the Law Review and earned a Certificate in Trial Advocacy. While in law school, Ben served as a judicial extern to the Honorable John W. Darrah of the United States District Court for the Northern District of Illinois, in addition to acting as a teaching assistant for Prof. Rogelio Lasso in several torts courses. Ben has since returned to the classroom as a guest-lecturer on issues related to class actions, complex litigation and negotiation. He also lectures incoming law students on the core first year curriculums. Before entering law school, Ben graduated from Colorado State University with a B.S. in Psychology.

Ben is also the director of EDELSON PC'S Summer Associate Program.

ARI J. SCHARG is a Partner at EDELSON PC. He handles technology-related class actions, focusing mainly on cases involving the unlawful geo-locational tracking of consumers through their mobile devices, the illegal collection, storage, and disclosure of personal information, fraudulent software products, data breaches, and text message spam. His settlements have resulted in tens of millions of dollars to consumers, as well as industry-changing injunctive relief. Ari has been appointed class counsel by state and federal courts in several nationwide class action settlements, including *Webb v. Cleverbridge*, *et al.*, No. 11-cv-4141 (N.D. Ill.), *Ledet v. Ascentive*, No. 11-cv-294 (E.D. Penn.), and *Drymon v. CyberDefender*, No. 11 CH 16779 (Cir. Ct. Cook Cnty., Ill.), and was appointed sole-lead class counsel in *Loewy v. Live Nation*, No. 11-cv-4872 (N.D. Ill.), where the court praised his work as "impressive" and noted that he "understand[s] what it means to be on a team that's working toward justice." Ari was selected as an Illinois Rising Star (2013) by Super Lawyers.

Prior to joining the firm, Ari worked as a litigation associate at a large Chicago firm, where he represented a wide range of clients including Fortune 500 companies and local municipalities. His work included representing the Cook County Sheriff's Office in several civil rights cases and he was part of the litigation team that forced Craigslist to remove its "Adult Services" section from its website.

Ari is very active in community groups and legal industry associations. He is a member of the Board of Directors of the Chicago Legal Clinic, an organization that provides legal services to low-income families in the Chicago area. Ari acts as Outreach Chair of the Young Adult Division of American Committee for the Shaare Zedek Medical Center in Jerusalem, and is actively involved with the Anti-Defamation League. He is also a member of the Standard Club Associates Committee.

Ari received his B.A. in Sociology from the University of Michigan – Ann Arbor and graduated magna cum laude from The John Marshall Law School where he served as a Staff Editor for The John Marshall Law Review and competed nationally in trial competitions. During law school, he also served as a judicial extern to The Honorable Bruce W. Black of the U.S. Bankruptcy Court for the Northern District of Illinois.

COURTNEY BOOTH is an Associate at EDELSON PC where her practice focuses on consumer and tech-related class actions.

Courtney received her J.D., *magna cum laude*, from The John Marshall Law School. While in law school, she was a staff editor of The John Marshall Law Review, a teaching assistant for Legal Writing and Civil Procedure, and a member of the Moot Court Honor Society. Courtney represented John Marshall at the Mercer Legal Ethics and Professionalism Competition where she was a semi-finalist and won Best Respondent's Brief and at the Cardozo/BMI Entertainment and Communications Law Competition where she placed in the top three oralists. Courtney was a 2013 Member of the National Order of Scribes.

Courtney focuses her public service efforts on providing settlement-related assistance to *pro se* plaintiffs. In one of her recent *pro bono* cases, the Court recognized Courtney's efforts and "express[ed] its appreciation" to her, stating that "[t]he work she has done for the plaintiff is of

the highest order and the way she has conducted herself in court is to be commended." *See Sroga v. City of Chicago*, No. 12-cv-9288, Dkt. 65 (N.D. Ill. Aug. 6, 2014).

Prior to law school, Courtney attended Saint Louis University where she earned a B.A. in Communication. While there, she was a community relations intern for the St. Louis Blues.

JONATHAN W. HODGE is an Associate at EDELSON PC where his practice focuses on complex consumer class actions.

Prior to joining EDELSON PC, Jonathan handled complex commercial litigation at an Am Law 100 defense firm, where he drove successful outcomes in matters with as much as $100,000,000 in controversy. Previously, Jonathan served as a consultant for a tech incubator where he helped clients form new business based on patent-protected technologies developed at the University of Michigan. He also served in the accounting department of Nucor Steel-Hertford, where his IT skillsets helped him largely automate the monitoring of the largest cost at a multibillion-dollar division of America's largest steel company.

Jonathan received his J.D. from the University of Michigan Law School. While in law school, Jonathan participated in the Campbell Moot Court and the Frank Murphy Society 1L Oral Advocacy Competition. He was awarded Legal Practice Honors for performing in the top 20% of his first-year legal research and writing classes.

Jonathan graduated *summa cum laude* from Chowan University, earning his B.S. in Business Administration with a double concentration in Information Systems and Accounting.

JAMIE J. R. HOLZ is an Associate at EDELSON PC where his practice focuses on tech and privacy-related class actions.

Jamie received his J.D., *magna cum laude*, from The John Marshall Law School. While attending law school, Jamie participated in The John Marshall Law Review and the Moot Court Honors Council, and was a Board Member for The John Marshall Trial Advocacy and Dispute Resolution Honors Board. Jamie competed nationally on several alternative dispute resolution teams, was the Herzog Moot Court Competition champion and a two-time Triple Crown Alternative Dispute Resolution Competition champion.

Jamie was an extern to the Honorable Arlander Keys in the United States District Court for the Northern District of Illinois and with the Cook County State's Attorney's Office. Jamie completed his time at John Marshall as a David R. Sargis Scholar and walked away with CALI awards in property law and civil procedure.

Prior to law school, Jamie attended Loras College where he earned a B.A. in Creative Writing and English Literature.

ALICIA HWANG is an Associate at EDELSON PC. Alicia practices in the area of consumer class action and general litigation.

Alicia received her J.D. from the Northwestern University School of Law, where she was an articles editor for the Journal of Law and Social Policy. During law school, Alicia was a legal intern for the Chinese American Service League, served as president of the Asian Pacific American Law Student Association and the Student Animal Legal Defense Fund, and was Chair of the Student Services Committee. She also worked as a student in the Northwestern Entrepreneurship Law Clinic and Complex Civil Litigation and Investor Protection Clinic.

Prior to joining EDELSON PC, Alicia worked as an Executive Team Leader for the Target Corporation, as well as a public relations intern for a tourism-marketing agency in London.

Alicia graduated *magna cum laude* from the University of Southern California, earning her B.A. in Communication. She is a member of the Phi Beta Kappa honor society.

NICK LARRY is an Associate at EDELSON PC where his practice focuses on technology and privacy class actions.

Nick has been appointed class counsel in multiple class actions that have resulted in tens of millions of dollars in refunds to consumers, including: *In re LinkedIn User Privacy Litig.*, No. 12-cv-3088 (N.D. Cal.); *Halaburda v. Bauer Publishing Co., LP*, No. 12-cv-12831 (E.D. Mich.); *Dunstan v. comScore*, No. 11-cv-5807 (N.D. Ill.); and *In re Netflix Privacy Litig.*, No. 11-cv-379 (N.D. Cal.).

Nick received his J.D., *cum laude*, from Northwestern University School of Law, where he was a senior editor of the Northwestern University Journal of International Law and Business. His student Comment, which examines the legal issues that may arise from National Hockey League players' participation in the 2014 Olympic Winter Games, appears in Vol. 32, No. 3A of the Northwestern University Journal of International Law and Business.

Nick attended Michigan State University, where he graduated with a B.A. in General Business Administration/Pre-law and played on the school's rugby team.

DAVID I. MINDELL is an Associate at EDELSON PC where he helps direct a team of attorneys and engineers in investigating and litigating cases involving complex tech fraud and privacy violations. His team's research has led to lawsuits involving the fraudulent development, marketing, and sale of computer software, unlawful tracking of consumers through mobile-devices and computers, unlawful collection, storage, and dissemination of consumer data, mobile-device privacy violations, large-scale data breaches, and the Bitcoin industry. On the other side, David also serves as a consultant to a variety of emerging technology companies.

Prior to joining EDELSON PC, David co-founded several tech, real estate, and hospitality related ventures, including a tech startup that was acquired by a well-known international corporation within its first three years. David has advised tech companies on a variety of legal and strategic

business-related issues, including how to handle and protect consumer data. He has also consulted with startups on the formation of business plans, product development, and launch.

While in law school, David was a research assistant for University of Chicago Law School Kauffman and Bigelow Fellow, Matthew Tokson, and for the preeminent cyber-security professor, Hank Perritt at the Chicago-Kent College of Law. David's research included cyberattack and denial of service vulnerabilities of the Internet, intellectual property rights, and privacy issues.

David has spoken to a wide range of audiences about his investigations and practice.

AMIR MISSAGHI is an Associate at EDELSON PC where he focuses on technology and privacy class actions.

Amir received his J.D. from the Chicago-Kent College of Law, where he was a member of the Moot Court Honor Society and a teaching assistant in Property. Before law school, he attended the University of Minnesota, where he received his B.S. and M.S. in Applied Economics. He then began working at a Fortune 50 company as a programmer and data analyst. During that time Amir started working on his graduate studies in Applied Economics where he focused on analyzing consumer choice in healthcare markets.

JOHN OCHOA is an associate at EDELSON PC where his practice focuses on protecting consumers with a special emphasis on privacy class action litigation.

John has secured important court decisions protecting the rights of consumers, including *Elder v. Pacific Bell Telephone Co*, 205 Cal. App. 4th 841 (2012), where the California Court of Appeal held that consumers may pursue claims against telecommunications companies for placing unauthorized charges on consumers' telephone bills, a practice known as "cramming." John was also appointed class counsel in *Lee v. Stonebridge Life Insurance Co*, 289 F.R.D. 292 (N.D. Cal. 2013), a case where the defendants are alleged to have caused the transmission of unauthorized text messages to the cellular telephones of thousands of consumers.

He graduated *magna cum laude* from The John Marshall Law School in May 2010 and served as Managing Editor for The John Marshall Law Review. His student Comment, which examines bicycling and government tort immunity in Illinois, appears in Vol. 43, No. 1 of The John Marshall Law Review. While in law school, John served as a research assistant, externed with Judge Thomas Hoffman at the Illinois Court of Appeals, and competed in the ABA National Appellate Advocacy Competition. John was awarded a Herzog scholarship for his academic performance and earned CALI awards for the highest grade in Torts, Property, and Administrative Law.

John is active in the Illinois legal community, and serves as Co-Chair of the Membership Committee on the Young Professionals Board of Illinois Legal Aid Online (ILAO). ILAO is a non-profit organization committed to using technology to increase access to free and pro bono legal services for underserved communities throughout Illinois.

He received his B.A. with Honors in Political Science from the University of Iowa in 2004.

ROGER PERLSTADT is an Associate at EDELSON PC, where he concentrates on appellate and complex litigation advocacy. He has briefed and argued appeals and motions in both federal and state appellate courts.

Prior to joining the firm, Roger was a law clerk to United States District Court Judge Elaine E. Bucklo, an associate at a litigation boutique in Chicago, and a Visiting Assistant Professor at the University of Florida Levin College of Law. He has published articles on the Federal Arbitration Act in various law reviews.

Roger has been named a Rising Star by *Illinois Super Lawyer Magazine* four times since 2010.

Roger graduated from the University of Chicago Law School, where he was a member of the University of Chicago Law Review. After law school, he served as a clerk to the Honorable Elaine E. Bucklo of the United States District Court for the Northern District of Illinois.

EVE-LYNN J. RAPP is an Associate at EDELSON PC, focusing her practice in the areas of class action and general litigation.

Prior to joining the firm, Eve-Lynn was involved in numerous class action cases in the areas of consumer and securities fraud, debt collection abuses, and public interest litigation. Eve-Lynn has substantial experience in both state and federal courts, including successfully briefing issues in both the United States and Illinois Supreme Courts.

Eve-Lynn received her J.D. from Loyola University of Chicago-School of Law, graduating *cum laude*, with a Certificate in Trial Advocacy. During law school, Eve-Lynn was an Associate Editor of Loyola's International Law Review and externed as a "711" at both the Cook County State's Attorney's Office and for Cook County Commissioner Larry Suffredin. Eve-Lynn also clerked for both civil and criminal judges (Honorable Yvonne Lewis and Plummer Lott) in the Supreme Court of New York.

Eve-Lynn graduated from the University of Colorado, Boulder, with distinction and Phi Beta Kappa honors, receiving a B.A. in Political Science.

BEN THOMASSEN is an Associate at EDELSON PC. At the firm, Ben's practice centers on the prosecution of class actions cases that address federally protected privacy rights and issues of consumer fraud—several of which have established industry-changing precedent. Among other high profile cases, Ben recently played key roles in delivering the winning oral argument before the United States Court of Appeals for the Eleventh Circuit in *Curry v. AvMed*, 693 F.3d 1317 (11th Cir. 2012) (a data breach case that has, following the Eleventh Circuit's decision, garnered national attention both within and without the legal profession) and securing certification of a massive consumer class in *Dunstan v. comScore*, No. 11 C 5807, 2013 WL 1339262 (N.D. Ill. Apr. 2, 2013) (estimated by several sources as the largest privacy case ever certified on an adversarial basis).

Ben received his J.D., *magna cum laude*, from the Chicago-Kent College of Law, where he also earned his certificate in Litigation and Alternative Dispute Resolution and was named Order of the Coif. At Chicago-Kent, Ben was Vice President of the Moot Court Honor Society and earned (a currently unbroken firm record of) seven CALI awards for receiving the highest grade in Appellate Advocacy, Business Organizations, Conflict of Laws, Family Law, Personal Income Tax, Property, and Torts.

Before settling into his legal career, Ben worked in and around the Chicago and Washington, D.C. areas in a number of capacities, including stints as a website designer/developer, a regular contributor to a monthly Capitol Hill newspaper, and a film projectionist and media technician (with many years experience) for commercial theatres, museums, and educational institutions. Ben received his Bachelor of Arts, *summa cum laude*, from St. Mary's College of Maryland and his Master of Arts from the University of Chicago.

SAMUEL LASSER is Of Counsel to EDELSON PC.

Samuel graduated with a degree in history from the University of Michigan (Ann Arbor) and received his J.D. from the University of San Francisco.

SHAWN DAVIS is the Director of Digital Forensics at Edelson PC, where he leads a technical team in investigating claims involving privacy violations and tech-related abuse. His team's investigations have included claims arising out of the fraudulent development, marketing, and sale of computer software, unlawful tracking of consumers through digital devices, unlawful collection, storage, and dissemination of consumer data, large-scale data breaches, receipt of unsolicited communications, and other deceptive marketing practices.

Prior to joining Edelson PC, Shawn worked for Motorola Solutions in the Security and Federal Operations Centers as an Information Protection Specialist. Shawn's responsibilities included network and computer forensic analysis, malware analysis, threat mitigation, and incident handling for various commercial and government entities.

Shawn has been a member of the adjunct faculty of the School of Applied Technology at the Illinois Institute of Technology (IIT) since December of 2013. Additionally, Shawn is a faculty member of the IIT Center for Cyber Security and Forensics Education which is a collaborative space between business, government, academia, and security professionals. Shawn's contributions aided in IIT's designation as a National Center of Academic Excellence in Information Assurance by the National Security Agency.

Shawn graduated with high honors from the Illinois Institute of Technology with a Masters of Information Technology Management with a specialization in Computer and Network Security. During graduate school, Shawn was inducted into Gamma Nu Eta, the National Information Technology Honor Society.