



Invasion of Privacy Act (“CIPA”) of \$18 Million. Even after payment of attorneys’ fees, incentive awards, and administration costs, class members will likely receive hundreds of dollars each, if not more. For these reasons, and those that follow, Plaintiffs respectfully request the Court to certify a settlement class, preliminarily approve the settlement, approve the proposed plan for notifying the class, and to set a date for a final approval hearing.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

This lawsuit was filed on December 9, 2016 on behalf of a proposed class of small businesses in California who received sales appointment setting calls from International Payment Services, LLC (“IPS”) or Ironwood Financial, LLC (“Ironwood”), or both. The lawsuit alleges, among other things, that the Fifth Third/Vantiv Defendants were in a principal-agent relationship with IPS and Ironwood and that, in the scope of that relationship, IPS and Ironwood violated CIPA by recording telemarketing calls without any warning that the recording was occurring.

On March 29, 2018, the Court denied a number of motions to dismiss filed by the various defendants, including the Fifth Third/Vantiv Defendants. For the past five years, the parties engaged in substantial discovery, including responding to hundreds of written discovery requests, the production of approximately 750,000 documents, conducted depositions and expert discovery, and engaged in motion practice. On September 4, 2020, the Court denied several motions for judgment on the pleadings filed by the defendants, including the Fifth Third/Vantiv Defendants. The parties have also fully briefed Plaintiffs’ motion for class certification, twice.

On May 3, 2021, Ironwood filed a voluntary petition for relief pursuant to Chapter 11, Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Mississippi (“Bankruptcy Court”), entitled *In Re: Ironwood Financial, LLC* (Case No. 21-10866) (the “Bankruptcy Case”). The Fifth Third/Vantiv Defendants filed a motion in the

Bankruptcy Case for derivative standing to, among other things, extend the automatic stay to them in this lawsuit. *See* Doc. 629-1. The Fifth Third/Vantiv Defendants also filed a motion in the Bankruptcy Case to re-open the claims bar date so that they can submit their own plan under which the claims of class members would be swept into and extinguished in Ironwood's bankruptcy. *See* Doc. 647-1. Both of these motions were set for hearing and ruling on January 13, 2022.<sup>2</sup>

The parties have conferred on numerous occasions over the past several years in an effort to reach a settlement but were always unsuccessful. On February 26, 2021, the parties participated in a full day mediation before the Honorable Layn R. Phillips (ret.) during which the parties were also unable to reach a settlement. Plaintiffs thereafter began separate negotiations with the Wells Fargo Defendants, which ultimately resulted in a \$28 Million settlement on behalf of approximately 192,836 class members who received calls during the period of time applicable to those defendants. Counsel for Plaintiffs and the Fifth Third/Vantiv Defendants thereafter began more serious settlement discussions, which lasted several months and resulted in the current settlement, a copy of which is attached as **Ex. A**. It is estimated that the class includes approximately 313,215 potential members who received approximately 1,153,324 recorded phone calls during the period of time covered by the settlement with the Fifth Third/Vantiv Defendants (*i.e.*, from May 8, 2014 to July 29, 2016). *See* Declaration of Myron M. Cherry ("Cherry Decl.") at ¶ 13, attached as **Ex. B**.

### **III. SUMMARY OF SETTLEMENT TERMS**

As noted above, the Settlement Agreement provides for the creation of a non-reversionary common fund of \$50 Million (the "Settlement Fund") for the benefit of the class.

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<sup>2</sup> After a settlement was reached in early January, the Vantiv Defendants requested that this hearing date be rescheduled, which request was granted.

See Settlement Agreement at ¶ 1. Each class member who does not elect to be excluded shall be eligible for a cash payment (the “Settlement Class Member Payment”) for each call that is covered under the settlement class definition (“Eligible Call”). To receive a Settlement Class Member Payment, all class members need to do is submit a claim form either by mail or online. *Id.* at ¶ 3. The claim form is simple, non-cumbersome, and includes a pre-paid return envelope that can be used to mail it to the Settlement Administrator at no cost to the class member. *Id.* at ¶ 3 and Ex. 2. Each Settlement Class Member Payment will be in an amount equal to the “Net Settlement Fund” divided by all Eligible Calls that were made to class members who timely and validly submit a claim up to a maximum of \$5,000 for each Eligible Call. *Id.* at ¶ 2.<sup>3</sup> “Net Settlement Fund” means the Settlement Fund less the amount of attorneys’ fees and costs awarded to class counsel, incentive awards, and settlement administration costs. *Id.* Class members who received multiple Eligible Calls are entitled to a Settlement Class Member Payment for each Eligible Call. *Id.*

The parties have agreed to retain KCC, LLC (the “Settlement Administrator”) to administer the settlement. *Id.* at ¶ 4. Notice will be sent by first class mail to each class member’s last known address. *Id.* at ¶ 6.a. For any notice that is returned with a forwarding address, the Settlement Administrator will re-mail the notice and claim form to the updated address. *Id.* at ¶ 6.b. For any notice that is returned without forwarding address information, the Settlement Administrator will use commercially reasonable efforts to locate a new address for the class member to mail the notice and claim form. *Id.* The Settlement Administrator will also publish a settlement administration website that will include the Settlement Agreement and other relevant documents and have the capability to accept claims online. *Id.* at ¶ 7. Notice of the settlement

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<sup>3</sup> CIPA provides for statutory damages up to \$5,000 per violation. *See* Cal. Penal Code § 637.2(a)(1).

will also be published via the internet, which will be distributed on desktop and mobile devices via various websites targeted in California. *Id.* at ¶ 6.c. The internet publication notice will have a link directly to the settlement administration website. *Id.*

The settlement includes several features designed to ensure that the entire Net Settlement Fund is distributed to the class. For example, if the initial claims rate is insufficient to exhaust the entire net settlement fund at the maximum payment of \$5,000 per Eligible Call, then an additional opportunity for class members to submit a claim will be provided. *Id.* at ¶ 27. All reasonable efforts will also be used to ensure that class members who submit a claim receive and cash their settlement checks, including the reissuance of checks and, after 18 months, remittance to the State of California's unclaimed property fund. *Id.* at ¶ 15. In the unlikely event that funds remain after all of these efforts have been exhausted then any such remainder will be remitted to the Electronic Frontier Foundation ("EFF") as a *cy pres* recipient, whose mission includes protecting privacy interests and "fight[ing] illegal surveillance." *Id.* at ¶¶ 15, 27; *see also* Electronic Frontier Foundation website, <https://www.eff.org/about>; *McCabe v. Six Continents Hotels, Inc.*, No. 12-CV-04818 NC, 2016 WL 491332, at \*2 (N.D. Cal. Feb. 8, 2016) (approving Electronic Frontier Foundation as *cy pres* recipient in CIPA settlement); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 234 (N.D. Ill. 2016) (approving Electronic Frontier Foundation as *cy pres* recipient in TCPA settlement, overruling objection). If the settlement becomes final, under no circumstances will any of the Settlement Fund revert to the Fifth Third/Vantiv Defendants. *See* Settlement Agreement at ¶¶ 15, 27.

Class members may opt-out of the class and the settlement by sending a written request for exclusion to the Settlement Administrator. *Id.* at ¶ 18. Class members who do not opt-out may object to the proposed settlement and/or the attorneys' fees and costs requested by class

counsel. *Id.* at ¶ 19. The Settlement Administrator estimates that settlement administration costs will be approximately \$498,919 - \$729,051. *See* Cherry Decl. at ¶ 14. Plaintiffs will seek incentive awards in the amount of \$5,000 each. *See* Settlement Agreement at ¶ 16. Class counsel will seek an award of attorneys' fees in the amount of one-third of the Settlement Fund after deducting settlement administration costs and incentive awards, as well as reimbursement of actual costs (estimated to be between \$340,000 to \$360,000). *Id.* at ¶ 17; *see also* Cherry Decl. at ¶ 12. Class counsel will file their petition supporting their request for attorneys' fees and costs no later than 21 days prior to the deadline for class members to object to the settlement. *See* Settlement Agreement at ¶ 17.

#### IV. ARGUMENT

The settlement here easily meets the standard for preliminary approval. "Federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7<sup>th</sup> Cir. 1996). "Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources." *Armstrong v. Bd. Of Sch. Dirs. Of Milwaukee*, 616 F.2d 305, 313 (7<sup>th</sup> Cir.1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7<sup>th</sup> Cir. 1998). Judicial review of a proposed class action settlement generally involves both a preliminary and final approval hearing. *See Manual for Complex Litigation, (Fourth)* § 21.632 at 490-91 (2010). At the preliminary approval stage, the Court must "make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." *Id.* At this stage, the Court need only "determine whether the proposed settlement is 'within the range of possible approval.'" *In re AT&T Mobility Wireless Data Servs.*

*Sales Litig.*, 270 F.R.D. 330, 346 (N.D. Ill. 2010) (quoting *Armstrong*, 616 F.2d at 314). More specifically:

This hearing is not a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing. If the district court finds a settlement proposal ‘within the range of possible approval,’ it then proceeds to the second step in the review process, the fairness hearing. Class members are notified of the proposed settlement and of the fairness hearing at which they and all interested parties have an opportunity to be heard.

*Id.* (quoting *Armstrong*, 616 F.2d at 314).

The settlement here clearly falls within the range of possible approval and should proceed to the next step of notifying class members and conducting a final fairness hearing

**A. The settlement provides substantial relief and should be preliminarily approved.**

“[W]hen conducting a fairness determination relevant factors include: ‘(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.’”

*Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7<sup>th</sup> Cir. 2014) (citing *Gautreaux v. Pierce*, 690 F.2d 616, 631 (7<sup>th</sup> Cir.1982)). “In reviewing these factors, courts view the facts ‘in the light most favorable to the settlement.’” *In re: Sears, Roebuck & Co. Front-Loading Washer Prod. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at \*6 (N.D. Ill. Feb. 29, 2016) (quoting *Isby*, 75 F.3d at 1199). Here, all of these factors favor preliminary approval of the settlement.

**1. The strength of Plaintiffs’ case compared to the terms of the proposed settlement.**

The Fifth Third/Vantiv Defendants have vigorously disputed the merits of Plaintiffs’ claims. While the Court ruled on several substantive motions prior to the settlement, including a

motion to dismiss and a motion for judgment on the pleadings, the Fifth Third/Vantiv Defendants would still likely file a motion for summary judgment at the conclusion of discovery. Among other things, the Fifth Third/Vantiv Defendants have maintained throughout this suit that there was no principal-agent relationship with IPS or Ironwood and, even if there were such a relationship, those parties acted outside the scope of its authority by illegally recording calls. Whether these complex issues would have been decided at summary judgment or at trial, they were far from certain for either side.

The Bankruptcy Case presented another challenge for the class to recover. Among other things, the Fifth Third/Vantiv Defendants sought to extend the automatic stay to them in this case. They also intended to file their own bankruptcy plan in which the class claims here would have been swept in to and resolved in the Bankruptcy Case. In addition to the proceedings in the Bankruptcy Case, the Fifth Third/Vantiv Defendants also raised a host of other defenses to the claims asserted against them, the resolution of which—either before this Court or on appeal—remain uncertain.

The Fifth Third/Vantiv Defendants have also taken the position that the \$5,000 statutory damage provision in CIPA applies per class member, not per call, which would drastically reduce the damages available because a large number of class members received multiple calls. While the weight of authority favors Plaintiffs' position on this issue, there is authority supporting the Fifth Third/Vantiv Defendants' view. *Compare Ronquillo-Griffin v. TELUS Communications, Inc.*, 17-cv-129 JM (BLM), 2017 WL 2779329, at \*6-8 (S.D. Cal. June 27, 2017) (holding that statutory damages under CIPA are \$5,000 per violation) *with Lal v. Capital One Financial Corp.*, No. 16-CV-06674-BLF, 2017 WL 1345636, at \*6-8 (N.D. Cal. Apr. 12, 2017) (holding that statutory damages under CIPA are \$5,000 per person, not per violation).



The settlement, on the other hand, provides a substantial and certain recovery for the class that may not otherwise be obtained. This settlement far exceeds both the \$28 Million settlement achieved in this case with the Wells Fargo Defendants and the previous largest CIPA settlement in any other case, which was \$18 Million. *See* Cherry Decl. at ¶ 6. The settlement also compares favorably to the other largest CIPA settlements found by class counsel:

- *Marenco v. Visa, Inc.*, C.D. Cal. Case No. 2:10-cv-08022: \$18 Million settlement of CIPA class action on behalf of approximately 600,000 class members or \$30 per class member.
- *Mirkarimi v. Nevada Prop. 1, LLC*, 2015 WL 5022327 (S.D. Cal. Aug. 24, 2015): \$14.5 Million settlement of CIPA class action on behalf of 150,000 class members or \$96.67 per class member.
- *Medeiros v. HSBC Card & Retail Services, Inc.*, C.D. Cal. Case No. 2:15-cv-09093: \$13 Million settlement of CIPA class action on behalf of over 1,700,000 class members or \$7.54 per class member.

The settlement here is larger than the previous three highest CIPA settlements *combined*, and provides for approximately \$159.63 per class member, which is higher than the \$145.84 per class member obtained in the settlement with the Wells Fargo Defendants. *See* Doc. 600 at 9. Even after deducting attorneys' fees and costs, settlement administration costs, and incentive awards, class members are in line to receive settlement payments that will likely be in the hundreds of dollars each, if not more.<sup>4</sup> In short, the settlement provides substantial and meaningful relief for vigorously contested and uncertain claims. The first factor, therefore, supports preliminary approval of the settlement.

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<sup>4</sup> For example, if the claims rate is the same as it was in the settlement with the Wells Fargo Defendants (12.26%) then approximately 38,400 class members (12.26% of 313,215 potential class members) will share in the Net Settlement Fund of approximately \$32,477,299.30 (\$50,000,000 fund less \$729,051 in administrative costs, \$15,000 in incentive awards, \$16,418,649.70 in attorneys' fees, and \$360,000 in costs). Thus, with a 12.26% response rate, the average per class member settlement payment will be approximately \$845.76 (\$32,477,299.30 / 38,400 class member claims). The amount each class member will receive, of course, will vary depending on how many Eligible Calls it received, but this example is illustrative of a potential average per class member recovery.

**2. *The likely complexity, length, and expense of continued litigation.***

Trying a class action lawsuit of this magnitude to conclusion would have been a complex, lengthy, and expensive endeavor. The docket alone has over 650 entries thus far. Furthermore, as noted above, the Fifth Third/Vantiv Defendants have vigorously contested vicarious liability and a trial on that issue alone would have been time-consuming and expensive. Moreover, significant additional discovery—including potentially dozens of depositions, as well as additional experts—would have been needed prior to any trial. And appeals almost certainly would have followed any judgment. The parallel litigation in the Bankruptcy Case would further complicate the resolution of this case and cause additional expense and delay. The second factor, therefore, clearly favors preliminary approval of the settlement.

**3. *The amount of opposition to settlement and the reaction of class members.***

Plaintiffs are aware of no opposition to the settlement amongst class members or any other parties. There was, however, no opposition to the prior settlement with the Wells Fargo Defendants. That settlement was well received by members of that class, many of whom are also members of the present settlement class. There is no reason to believe that class members will react any differently to the similar, if not more favorable, terms of this settlement. This factor, therefore, also favors preliminary approval of the settlement.

**4. *The opinion of competent counsel.***

In connection with the fourth factor, Plaintiffs submit the Declaration of Myron M. Chery, a lawyer with over 50 years of experience in complex and class action litigation. Based on his extensive experience, Mr. Chery opines that the settlement is fair, reasonable, and adequate and provides a significant benefit to the class. Chery Decl. at ¶ 6; *see also Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586-87 (N.D. Ill. 2011) (concluding that class counsel's

opinion that settlement was fair supported approval of the proposed settlement where counsel had extensive experience in class actions and complex litigation); *Vought v. Bank of Am., N.A.*, 901 F. Supp. 2d 1071, 1096 (C.D. Ill. 2012) (considering declarations of class counsel expressing their opinions that the proposed settlement was fair, reasonable, and adequate); *Clesceri v. Beach City Investigations & Protective Servs., Inc.*, 10-cv-3873, 2011 WL 320998, at \*10 (C.D. Cal. Jan. 27, 2011) (“Courts give weight to counsels’ opinions regarding the fairness of a settlement, when it is negotiated by experienced counsel.”).

**5. *The stage of the proceedings and the amount of discovery completed.***

Lastly, the fifth factor clearly weighs in favor of preliminary approval. The case settled only after the parties litigated and obtained rulings from the Court on several substantive and potentially dispositive issues in the case. *See* Cherry Decl., ¶¶ 8-11. The parties also engaged in substantial discovery, including extensive written discovery and voluminous production of documents, as well as several depositions, including of all the named Plaintiffs, three of Plaintiffs’ experts, and ten employees of the Fifth Third/Vantiv Defendants. *Id.* at ¶ 9. Due to the extensive investigation and discovery that occurred, as well as receiving several substantive rulings from the Court, both parties were able to fully assess the strengths and weaknesses of the claims and defenses in negotiating this settlement. Accordingly, this factor favors preliminary approval of the settlement as well.

**B. *The requested award of attorneys’ fees and costs and incentive awards are reasonable and appropriate.***

Considering the value of the settlement, the benefits conferred on the class, the risks undertaken by class counsel, and class counsel’s knowledge and experience, the requested attorneys’ fees and costs are also fair and reasonable. Class counsel achieved an excellent settlement while ultimately avoiding the uncertainties and risks of a trial or the Bankruptcy Case.

For five years, class counsel dedicated substantial time and incurred considerable out-of-pocket costs—all on a contingency basis—in litigating this case without payment and will continue to expend a significant amount of time and resources throughout the settlement approval and administration process.

Class counsel will seek an award of attorneys' fees in an amount equal to one-third of the Settlement Fund after subtracting incentive awards and settlement administration costs. This request is consistent with the market rate for awarding attorneys' fees in class cases in this Circuit. *See Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201–02 (N.D. Ill. 2018) (“[A] typical contingency agreement in this circuit might range from 33% to 40% of recovery.”) (citing cases); *Young v. Cty. of Cook*, No. 06 C 552, 2017 WL 4164238, at \*6 (N.D. Ill. Sept. 20, 2017) (“[A] 33% contingent fee of the total recovery is on the low end of what is typically negotiated *ex ante* by plaintiffs' firms taking on large, complex cases....”) (awarding attorneys' fees in the amount of one-third of the \$32.5 million fund); *Standard Iron Works v. ArcelorMittal*, No. 08 C 5214, 2014 WL 7781572, at \*1 (N.D. Ill. Oct. 22, 2014) (“The Court finds that a 33% fee comports with the prevailing market rate for legal services of similar quality in similar cases.”) (awarding attorneys' fees in the amount of 33% of \$163.9 million settlement fund); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, 97-cv-7694, 2001 WL 1568856, at \*4 (N.D. Ill. Dec. 10, 2001) (“A customary contingency fee would range from 33 1/3% to 40% of the amount recovered.”); *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079 (S.D. Ill. Dec. 16, 2018) (awarding attorneys' fees in the amount of one-third of the \$250 million common fund); *Will v. Gen. Dynamics Corp.*, 06-cv-698, 2010 WL 4818174, at \*2 (S.D. Ill. Nov. 22, 2010) (“Where the market for legal services in a class action is only for contingency fee agreements ... ‘the normal rate of compensation in the market’ is ‘33.33% of the common fund recovered.’”).

Class counsel will also petition for reimbursement of actual unreimbursed costs, which is estimated to be between \$340,000-\$360,000. *See* Cherry Decl. at ¶ 12. Class counsel will file their petition supporting their request for attorneys' fees and costs no later than 21 days prior to the deadline for class members to object to the settlement.

The requested incentive awards of \$5,000 to each settling Plaintiff are also consistent with what is typically awarded in class cases. *See Craftwood Lumber Co. v. Interline Brands, Inc.*, 11-cv-4462, 2015 WL 1399367, \*6 (N.D. Ill. Mar. 23, 2015) (“[A]n award of \$25,000 is in line with incentive fees awarded by other courts in this district, and with the mean percentage of incentive fees awarded in class actions nationwide.”); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7<sup>th</sup> Cir. 1998) (affirming \$25,000 incentive award for named plaintiff in class action settlement); *In re Sw. Airlines Voucher Litig.*, No. 11-cv-8176, 2013 WL 4510197, \*11 (N.D. Ill. Aug. 26, 2013) *aff'd as modified*, 799 F.3d 701 (7<sup>th</sup> Cir. 2015) (“Awards of \$15,000 for each plaintiff are well within the ranges that are typically awarded in comparable cases.”).

**C. The proposed form and method of class notice satisfies due process.**

Rule 23(e)(1) of the Federal Rules of Civil Procedure provides that when the parties reach a proposed class action settlement, “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” FED. R. CIV. P. 23(e)(1). Rule 23 further provides that “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.” FED. R. CIV. P. 23(c)(2)(B).

Here, the parties have agreed to provide direct notice of the settlement to the class by first class mail to each class member's last known address. *See Mullins v. Direct Digital, LLC*, 795

F.3d 654, 665 (7th Cir. 2015) (“When class members’ names and addresses are known or knowable with reasonable effort, notice can be accomplished by first-class mail.”); *Boggess v. Hogan*, 410 F. Supp. 433, 442 (N.D. Ill. 1975) (“The United States Supreme Court has stated that individualized notice by mail to the last known address best satisfies the requirements of notice in class action[s].”) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-77 (1974)).

The notice was collaboratively written by the parties and clearly provides information to class members about the nature of the action, the definition of the class certified, the benefits of the settlement, how to be excluded from the class or object to the settlement, and how class members’ legal rights are affected by remaining in or opting out of the class. A settlement website will also be established that will include a copy of the notice, the lawsuit, and other relevant information. Notice of the settlement will also be published via the internet, which will be distributed on desktop and mobile devices via various websites targeted in California.

For these reasons, the notice plan agreed to in the settlement is the best notice practicable and affords class members with all due process protections required by Rule 23. As such, the proposed notice plan should be approved.

**D. The Court should certify a settlement class.**

The Court should certify the proposed Settlement Class as it pertains to the Fifth Third/Vantiv Defendants and for settlement purposes only. *See* Plaintiffs’ Motion for Class Certification (Doc. 532), Memorandum of Law in Support of Class Certification (Doc. 326) and reply thereto (Doc. 576), incorporated herein by reference as if fully set forth herein. Pursuant to the Settlement Agreement, the class definition to be certified for settlement purposes should be amended as follows:

All call recipients that received a telephone call to a California telephone number from an employee, agent, or other representative of, or from a call center operated

by, International Payment Services, LLC or Ironwood Financial, LLC, or one of their affiliates, between May 8, 2014 and July 29, 2016, who appeared on a lead list maintained by International Payment Services, LLC or Ironwood Financial, LLC, while the call recipient was physically present in California.

**WHEREFORE**, Plaintiffs' request the Court to (i) certify this case as a class action as it pertains to the Fifth Third/Vantiv Defendants and for settlement purposes only, appoint Plaintiffs Sat Narayan d/b/a Express Hauling, Robert Meyer d/b/a Mangia Nosh, and Taysir Tayeh d/b/a Chief's Market as class representatives of the settlement class, and appoint Plaintiffs' counsel as class counsel for the settlement class; (ii) grant preliminary approval of the settlement; (iii) direct that notice be sent in accordance with the terms of the Settlement Agreement; and (iv) set a final approval hearing no earlier than 112 days (16 weeks) after entry of an order preliminarily approving the settlement.

Dated: March 12, 2022

Respectfully submitted,  
By:           /s/ Jacie C. Zolna            
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he served the foregoing **Motion for Preliminary Approval of Class Action Settlement** upon:

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via the electronic filing system, on the 12<sup>th</sup> day of March, 2022.

/s/ Jacie C. Zolna



**Ex. A**

## SETTLEMENT AGREEMENT

***THIS SETTLEMENT AGREEMENT*** (the “Agreement”) is made and entered into between Sat Narayan d/b/a Express Hauling, Robert Meyer d/b/a Mangia Nosh, and Taysir Tayeh d/b/a Chief’s Market (collectively, “Plaintiffs”), individually and in their representative capacity on behalf of the settlement class defined below, and Fifth Third Bank, National Association, including its affiliates and subsidiaries (collectively, “Fifth Third”), Vantiv, Inc. and Worldpay, Inc., n/k/a Worldpay LLC (“Vantiv”), and National Processing Company n/k/a Worldpay ISO, Inc. (“NPC”) (collectively, “Fifth Third/Vantiv Defendants”), subject to Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs and the Fifth Third/Vantiv Defendants are sometimes individually referred to herein as a “Party” and collectively as the “Parties.”

### I. RECITALS

***WHEREAS***, on December 9, 2016, certain of the Plaintiffs filed a class action lawsuit against, among others, the Fifth Third/Vantiv Defendants in the United States District Court for the Northern District of Illinois (the “Court”), which is now entitled *Sat Narayan d/b/a Express Hauling, et al. v. Fifth Third Bank, et al.*, Case No. 1:16-cv-11223 (the “Lawsuit”), which was previously referred to as *CS Wang & Associate, et al. v. Fifth Third Bank, et al.*, Case No. 1:16-cv-11223. The Lawsuit alleges, among other things, that the Fifth Third/Vantiv Defendants were in a principal-agent relationship with International Payment Services, LLC (“IPS”) and Ironwood Financial, LLC (“Ironwood”) and that, in the scope of that relationship, IPS and Ironwood violated Sections 632 and 632.7 of the California Invasion of Privacy Act (“CIPA”) by recording certain telephone calls to California businesses;

***WHEREAS***, on March 29, 2018, the Court denied the Fifth Third/Vantiv Defendants’ motion to dismiss the First Amended Complaint;

***WHEREAS***, on February 12, 2019, Plaintiffs filed a second amended complaint (the “Second Amended Complaint”);

***WHEREAS***, on September 4, 2020, the Court denied the Fifth Third/Vantiv Defendants’ motion for judgment on the pleadings;

***WHEREAS***, Plaintiffs have moved the Court for certification of six putative classes of plaintiffs that received certain calls from either IPS or Ironwood on a telephone in California during time periods when Plaintiffs allege that (i) IPS was acting as an agent of Wells Fargo Bank, N.A. (“Wells Fargo”) and First Data Merchant Services, LLC (“First Data”) (the “Putative Wells Fargo-IPS Classes”); (ii) IPS was acting as an agent of Fifth Third, Vantiv, and NPC (the “Putative Fifth Third-IPS Classes”); (iii) Ironwood was acting as an agent of Fifth Third, Vantiv, and NPC (the “Putative Fifth Third-Ironwood Classes”). Plaintiffs contend that each such telephone call falls exclusively within either (x) the Putative Wells Fargo-IPS Classes, or (y) the Putative Fifth Third-IPS Classes and Putative Fifth Third-Ironwood Classes. Plaintiffs do not assert that there are any phone calls for which both Fifth Third, Vantiv, and/or NPC, on the one hand, and Wells Fargo and/or First Data, on the other hand, have potential joint liability;

**WHEREAS**, Plaintiffs CS Wang & Associate and Jay Schmidt Insurance Agency, Inc. previously reached a settlement with defendants Wells Fargo and First Data to resolve claims relating to calls for which they had potential liability, which settlement was granted final approval by the Court;

**WHEREAS**, on May 3, 2021, Ironwood filed a voluntary petition for relief pursuant to Chapter 11, Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Mississippi (“Bankruptcy Court”), entitled *In Re: Ironwood Financial, LLC* (Case No. 21-10866) (the “Bankruptcy Case”). The Fifth Third/Vantiv Defendants have moved in the Bankruptcy Case for derivative standing to, among other things, extend the automatic stay to them in this Lawsuit;

**WHEREAS**, the Parties have fully briefed Plaintiffs’ motion for class certification, conducted written discovery, exchanged voluminous document productions, engaged in motion practice, conducted depositions, and engaged in other substantial litigation on the merits of the Lawsuit;

**WHEREAS**, the Parties have conferred over the past several years in an effort to reach a settlement of this dispute;

**WHEREAS**, on February 26, 2021, the Parties participated in a mediation before the Honorable Layn R. Phillips (ret.) during which the Parties were unable to reach a settlement;

**WHEREAS**, the terms and conditions of the settlement set forth herein were reached after extensive, *bona fide*, arm’s-length negotiations among the Parties by their respective attorneys and other representatives;

**WHEREAS**, the Parties have investigated the facts and have analyzed the relevant legal issues with regard to the claims and defenses asserted in the Lawsuit. Based on this investigation, Plaintiffs believe the Lawsuit has merit while the Fifth Third/Vantiv Defendants believe the Lawsuit has no merit, deny all liability, and deny that the Putative Fifth Third-IPS Classes and Putative Fifth Third-Ironwood Classes should be certified as litigation classes in the Lawsuit. The Parties also have each considered the uncertainties of trial and the benefits to be obtained under the proposed settlement, and have considered the costs, risks, and delays associated with the continued prosecution of this complex litigation, and the likely appeals of any rulings in favor of either Plaintiffs or the Fifth Third/Vantiv Defendants. After undertaking this investigation and analysis, counsel for Plaintiffs (“Settlement Class Counsel,” as identified in Paragraph 47 below) believe that it is in the best interest of Settlement Class Members (as defined below in Paragraph 22) to enter into this Agreement;

**NOW, THEREFORE**, in consideration of the representations, covenants, and promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged as evidenced by the execution of this Agreement, the Parties agree, subject to Court approval, as follows:

## II. SETTLEMENT CLASS RELIEF

1. **Settlement Fund:** In exchange for the mutual promises and covenants in this Agreement, including without limitation, the releases as set forth in Paragraph 21 and the dismissal of the Lawsuit with respect to the Fifth Third/Vantiv Defendants as set forth in Paragraph 20, the Fifth Third/Vantiv Defendants shall pay the total amount of Fifty Million Dollars (\$50,000,000) (the “Settlement Payment”) to create a fund on behalf of Settlement Class Members (the “Settlement Fund”). The Settlement Payment shall be made as set forth in Paragraph 12. The Settlement Payment represents the total extent of the Fifth Third/Vantiv Defendants’ monetary obligations under this Agreement. In no event shall the Fifth Third/Vantiv Defendants’ total monetary obligation with respect to this Agreement exceed the Settlement Payment.

2. **Settlement Class Member Payments:** Each Settlement Class Member who does not elect to be excluded as set forth below in Paragraph 18 shall be eligible under this Agreement for a cash payment (the “Settlement Class Member Payment”) for each call that is covered under the settlement class definition set forth below in Paragraph 22 (an “Eligible Call”). Each Settlement Class Member Payment will be in an amount equal to the “Net Settlement Fund” divided by all Eligible Calls that were made to Settlement Class Members who timely and validly submit a claim as described below in Paragraph 3, up to a maximum of Five Thousand Dollars (\$5,000) for each Eligible Call. “Net Settlement Fund” means the Settlement Fund less the amount of attorneys’ fees and costs awarded to Settlement Class Counsel, incentive awards awarded to Plaintiffs, and Settlement Administration Costs (as defined in Paragraph 9). Settlement Class Members who received multiple Eligible Calls are entitled to a Settlement Class Member Payment for each such Eligible Call to that Settlement Class Member and the Settlement Administrator may include all Settlement Class Member Payments for any such Settlement Class Member in a single settlement check.

3. **Claims Process:** In order to receive a Settlement Class Member Payment, a Settlement Class Member must complete the Claim Form sent with the Notice as described below or submit a claim online at the Settlement Website described below. Only one Claim Form is required for each Settlement Class Member even if the Settlement Class Member received and is eligible for payment for more than one Eligible Call. The “Claims Deadline” for Settlement Class Members to submit a claim for a Settlement Class Member Payment shall be fifty-six (56) days after the Notice Date as set forth below. A claim shall be timely filed if postmarked or submitted online on or before the Claims Deadline. Claims postmarked or submitted online within seven (7) days after the Claims Deadline shall also be deemed timely and shall be eligible for a Settlement Class Member Payment.

## III. SETTLEMENT CLASS NOTICE AND SETTLEMENT ADMINISTRATION

4. **Retention of Settlement Administrator:** KCC, LLC (the “Settlement Administrator”) will be retained as the settlement administrator. If KCC, LLC is unable or unwilling to be the settlement administrator then the Parties will jointly select a reputable settlement administrator to administer the notice and settlement or, absent an agreement by the Parties, one will be appointed by the Court. Because the costs and expenses of settlement

administration will affect each Settlement Class Member's share of the Settlement Fund, the costs and expenses of claims administration shall be overseen by Settlement Class Counsel. The Fifth Third/Vantiv Defendants' counsel may also oversee the claims administration process as they deem necessary. The Parties will use good faith efforts to minimize the costs of settlement administration. The Settlement Administrator will file a declaration with the Court, as part of the final approval papers, stating that the notice procedures set forth in this Part III of the Agreement and the Preliminary Approval Order (defined below) were followed.

**5. Settlement Class Member Data:** The data necessary to facilitate notice to Settlement Class Members has previously been provided to the Settlement Administrator. The Settlement Administrator shall use commercially reasonable efforts to ensure the accuracy of Settlement Class Member addresses to use for purposes of sending notice as set forth below. The Parties shall take all reasonable measures necessary to respond to any supplemental data requests from the Settlement Administrator. The Settlement Administrator must execute Attachment A of the Agreed Confidentiality Order entered by the Court on August 11, 2017. The Settlement Administrator will treat the information regarding the Settlement Class Members in a confidential manner pursuant to said Agreed Confidentiality Order.

**6. Settlement Class Notice:**

**a. Mailing of Settlement Class Notice:** Within twenty-one (21) days after entry of an order granting preliminary approval of this settlement that is without material change to this Agreement or the Proposed Preliminary Approval Order (defined below) (the "Preliminary Approval Order"), the Settlement Administrator shall mail notice of this settlement to the Settlement Class Members via First Class Mail in the form attached hereto as **Ex. A** (the "Notice"). As used in this Settlement Agreement, the "Notice Date" refers to the date on which the Settlement Administrator begins to mail notice. The Notice shall also include a claim form in the form attached hereto as **Ex. B** (the "Claim Form"), as well as a pre-paid, self-addressed return envelope that Settlement Class Members can use to mail their Claim Form to the Settlement Administrator.

**b. Follow-Up Mailings:** For any Notice that is returned with a forwarding address, the Settlement Administrator shall update that Settlement Class Member's address for purposes of administering this settlement and re-mail the Notice and Claim Form to the updated address. For any Notice that is returned without forwarding address information, the Settlement Administrator shall use commercially reasonable efforts to locate a new address for the Settlement Class Member. If such a search produces an updated address, the Settlement Administrator shall update that Settlement Class Member's address for purposes of administering this settlement and re-mail the Notice and Claim Form to the updated address.

**c. Publication Notice:** Within twenty-one (21) days after entry of the Preliminary Approval Order, the Settlement Administrator shall publish on the internet the publication notice ("Publication Notice"). The impressions of the Publication Notice will be distributed on desktop and mobile devices via various websites in the manner

recommended by the Settlement Administrator. The form and content of the Publication Notice shall be substantially as follows:

If you received a call from International Payment Services, LLC or Ironwood Financial, LLC between May 8, 2014 and July 29, 2016 in an effort to set an in-person sales appointment you may be eligible for a cash payment from a class action settlement.

CLICK HERE FOR MORE INFORMATION OR TO SUBMIT A CLAIM [link to Settlement Website]
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**7. Settlement Administration Website:** Within twenty-one (21) days after entry of the Preliminary Approval Order, the Settlement Administrator shall develop and activate a settlement administration website (the “Settlement Website”). The Settlement Website shall post a copy of the Second Amended Complaint, the Fifth Third/Vantiv Defendants’ Answer to the Second Amended Complaint, the Notice, this Agreement, and any other materials the Parties agree to include, and shall be designed and constructed to electronically accept Claim Forms from Settlement Class Members for a Settlement Class Member Payment. The Settlement Administrator shall secure a URL for the Settlement Website approved by the Parties. The content and format of the website will be agreed upon by the Parties. Ownership of the Settlement Website URL shall be transferred to Vantiv within ten (10) days of the date on which operation of the Settlement Website ceases.

**8. Settlement Call Center:** The Settlement Administrator shall designate a toll-free number for receiving calls related to the settlement (the “Settlement Call Center”). Anyone may call the Settlement Call Center from anywhere in the United States. The Parties shall jointly resolve any dispute that may arise regarding the operation of the Settlement Call Center. The Settlement Call Center shall be maintained from the date that is twenty-one (21) days after entry of the Preliminary Approval Order until thirty-five (35) days after the Final Settlement Date as defined below.

**9. Cost of Settlement Administration:** All costs and expenses of settlement administration shall be paid exclusively from the Settlement Fund and under no circumstances shall the Fifth Third/Vantiv Defendants have any responsibility, duty, or obligation to pay any amount in addition to the Settlement Fund to cover the costs and expenses of settlement administration. Such costs shall include, but not be limited to: (i) preparing, mailing, and monitoring all necessary notices and related documents; (ii) developing, maintaining, and operating the Settlement Website; (iii) communicating with and responding to Settlement Class Members; (iv) processing claims submitted by Settlement Class Members and computing settlement payments for Settlement Class Members; (v) distributing payments to Settlement Class Members; (vi) postage costs; (vii) costs associated in locating Settlement Class Members and reissuing checks; (viii) fees and costs incurred for any vendors or other third parties in the administration of the settlement; (ix) tax obligations in connection with interest earned on the Settlement Fund; (x) the costs of the CAFA Notice (as defined in Paragraph 10); (xi) costs of

establishing and maintaining an escrow account for the Settlement Payment; and (xii) other fees and costs reasonably incurred in administering the settlement contemplated herein (collectively, the “Settlement Administration Costs”). The Fifth Third/Vantiv Defendants shall have no responsibility for the correct distribution of the funds and any errors shall be the responsibility of the Settlement Administrator and Settlement Class Counsel.

**10. CAFA Notice:** The Fifth Third/Vantiv Defendants shall comply with and timely send all notices required under 28 U.S.C. § 1715 (the “CAFA Notice”), but may delegate that responsibility to the Settlement Administrator.

**11. Processing Submitted Claims and the Settlement Class Member Report:** The Settlement Administrator shall employ reasonable procedures to process each claim submitted by a Settlement Class Member and to determine whether it is a valid claim that was submitted in accordance with the directions on the Claim Form or Settlement Website and satisfies the conditions of eligibility for a Settlement Class Member Payment as set forth in this Agreement. Within twenty-one (21) days after the Claims Deadline (*i.e.*, seventy-seven (77) days after the Notice Date), the Settlement Administrator shall provide Settlement Class Counsel and counsel for the Fifth Third/Vantiv Defendants with a report setting forth the identity of all Settlement Class Members who validly and timely submitted a claim for a Settlement Class Member Payment and for each such Settlement Class Member: (i) the total number of Eligible Calls for which the Settlement Class Member submitted a claim to receive a Settlement Class Member Payment, and (ii) the total amount of the Settlement Class Member Payment for that Settlement Class Member (the “Settlement Class Member Report”). The Settlement Class Member Report shall also state the total amount of all Settlement Class Member Payments.

#### IV. FUNDING AND TIMING OF SETTLEMENT

**12. Funding of Settlement:** Within fourteen (14) days after the entry of the Preliminary Approval Order, the Fifth Third/Vantiv Defendants shall remit to the Settlement Administrator an amount of \$250,000 to cover the administrator’s projected expenses for carrying out the notice plan. Within forty-two (42) days after the entry of the Final Approval Order (as defined below), the Fifth Third/Vantiv Defendants shall remit to the Settlement Administrator the full amount of the Settlement Fund (\$50,000,000), less amounts previously paid to cover Settlement Administration Costs (the “Remaining Settlement Fund”). The Settlement Administrator shall hold these funds in escrow and shall disburse them in accordance with the terms of this Agreement. If this Settlement is deemed or declared invalid or void *ab initio* for any reason, including the reasons set forth below in Paragraphs 25 and 26, the Settlement Administrator shall immediately refund the Settlement Payment to the Fifth Third/Vantiv Defendants less any amounts already expended by the Settlement Administrator on Settlement Administration Costs.

**13. Timing of Settlement Class Member Payments:** The Settlement Administrator shall begin mailing the Settlement Class Member Payments to Settlement Class Members within twenty-eight (28) days after the Final Settlement Date (as defined in Paragraph 14) and all such mailings shall be completed no later than fourteen (14) days thereafter.

**14. Final Settlement Date:** The “Final Settlement Date” shall be the thirty-first (31<sup>st</sup>) day after the Court enters a final and appealable order and/or judgment approving this Agreement that is without material change to this Agreement or the Proposed Final Approval Order (defined below) (the “Final Approval Order”), but only if there is no appeal taken from the Final Approval Order. If an appeal is taken from the Final Approval Order, the Final Settlement Date shall be the date on which a reviewing court affirms the Final Approval Order, dismisses the appeal, or denies review and (i) all avenues of appeal and/or rehearing have been exhausted, or (ii) the time for seeking further appeals and/or a petition for rehearing has expired. If an appeal is taken from the Final Approval Order, then within seven (7) days after receipt of the Remaining Settlement Fund from the Fifth Third/Vantiv Defendants, the Settlement Administrator shall deposit the Net Settlement Fund into a separate, interest-bearing, escrow account. The account must be reasonably acceptable to Settlement Class Counsel. If the Final Settlement Date occurs, any interest earned on this account shall serve to increase the Net Settlement Fund and, thus, individual Settlement Class Member Payments. If the Settlement is deemed or declared invalid or void *ab initio* for any reason, then the interest earned on this escrow account shall be included in the refund to the Fifth Third/Vantiv Defendants in accordance with Paragraph 12.

**15. Reissuance of Checks for Settlement Class Member Payments:** Settlement Class Members shall have ninety (90) days from the date a Settlement Class Member Payment check is dated in which to cash or deposit the check. Checks for Settlement Class Member Payments shall be dated no more than three (3) days prior to the date they are actually mailed. Upon expiration of the ninety (90) day period set forth in the first sentence of this Paragraph 15, the Settlement Administrator shall re-issue checks to all Settlement Class Members who failed to cash or deposit their initial Settlement Class Member Payment check. These checks shall also be dated no more than three (3) days prior to the date they are actually mailed and shall also have a ninety (90) day expiration period. The funds for Settlement Class Member Payment checks that remain uncashed or undeposited after this expiration date shall be maintained by the Settlement Administrator for a period of at least eighteen (18) months from the Final Settlement Date during which period of time Settlement Class Members who did not timely cash or deposit their Settlement Class Member Payment check shall be allowed to request the Settlement Administrator to re-issue the check upon reasonable verification that it is the actual Settlement Class Member or heir, successor, or executor to the Settlement Class Member. If, at the expiration of the eighteen (18) month period after the Final Settlement Date, Settlement Class Member Payment checks still remain uncashed or undeposited then any remaining funds shall, if possible, be turned over to the State of California’s unclaimed property fund. The Settlement Administrator shall be authorized to take whatever steps are necessary, including, but not limited to, making additional efforts to ensure Settlement Class Member Payments are received and cashed by Settlement Class Members, in order to comply with any requirements for turning these funds over to the State of California. In the event turning these funds over to the State of California becomes impossible or impracticable in the judgment of the Settlement Administrator, then any such remaining amounts will be paid to the Electronic Frontier Foundation. Under no circumstances will any of these amounts revert to any of the Fifth Third/Vantiv Defendants.



**V. INCENTIVE AWARDS AND SETTLEMENT CLASS COUNSEL'S FEES AND COSTS**

**16. Named Plaintiffs' Incentive Award:** Settlement Class Counsel may petition the Court for incentive awards in the amount of Five Thousand dollars (\$5,000) each to Plaintiffs Sat Narayan d/b/a Express Hauling, Robert Meyer d/b/a Mangia Nosh, and Taysir Tayeh d/b/a Chief's Market. Within seven (7) days after the Final Settlement Date, the Settlement Administrator shall remit to Settlement Class Counsel, or directly to each Plaintiff at Settlement Class Counsel's request, separate checks in the name of Sat Narayan d/b/a Express Hauling, Robert Meyer d/b/a Mangia Nosh, and Taysir Tayeh d/b/a Chief's Market in the amount of their respective incentive awards awarded by the Court.

**17. Settlement Class Counsel's Attorneys' Fees and Costs:** Settlement Class Counsel will petition the Court for an award of attorneys' fees from the Settlement Fund not to exceed one-third (33.33%) of the Settlement Fund, after deducting incentive awards and Settlement Administration Costs, as well as an additional amount to be paid from the Settlement Fund for actual costs. Settlement Class Counsel shall file such motion or petition supporting their request for attorneys' fees and costs with the Court no later than twenty-one (21) days prior to the deadline for Settlement Class Members to object to the settlement as set forth below in Paragraph 19. The Fifth Third/Vantiv Defendants will not oppose this motion or petition. If no appeal has been filed to the Final Approval Order, the Settlement Administrator shall remit to Settlement Class Counsel the entire amount of the attorneys' fees and costs awarded by the Court within three (3) business days after it receives the Remaining Settlement Fund from the Fifth Third/Vantiv Defendants. If, however, an appeal is taken from the Final Approval Order, then within seven (7) days after receipt of the Remaining Settlement Fund from the Fifth Third/Vantiv Defendants, the Settlement Administrator shall deposit the amount of the attorneys' fees and costs awarded by the Court into a separate, interest-bearing escrow account, which account must be reasonably acceptable to Settlement Class Counsel. If the Final Settlement Date occurs, any interest earned on this account attributable to the amount of attorneys' fees and costs awarded to Settlement Class Counsel shall be disbursed to Settlement Class Counsel along with the award of attorneys' fees and costs within three (3) business days after the Final Settlement Date. If the Settlement is deemed or declared invalid or void *ab initio* for any reason, then the interest earned on this escrow account shall be included in the refund to the Fifth Third/Vantiv Defendants in accordance with Paragraph 12.

**VI. RIGHT TO OPT-OUT OR OBJECT**

**18. Exclusion/Opt-Out Elections:** Settlement Class Members may elect not to be part of the Lawsuit and not to be bound by this Agreement (*i.e.*, "opt-out"). To make this election, Settlement Class Members must mail a written "Opt-Out Election" to the Settlement Administrator at an address specified in the Notice stating: (i) the name and case number of the Lawsuit: *Sat Narayan d/b/a Express Hauling, et al. v. Fifth Third Bank, et al.*, Case No. 1:16-cv-11223; (ii) the full name, address, telephone number, and email address of the Settlement Class Member electing exclusion; (iii) a statement that the Settlement Class Member elects to be excluded from the Lawsuit and elects not to participate in the settlement; (iv) the full name, title, business address, business telephone number, and business email address of the person submitting the written election for the Settlement Class Member; and (v) a representation that the

person submitting the written election has the authority to do so on behalf of the Settlement Class Member. Opt-Out Elections must be postmarked no later than forty-nine (49) days after the Notice Date (the “Opt-Out Deadline”). Except for those Settlement Class Members who have properly and timely mailed an Opt-Out Election, all Settlement Class Members will be bound by this Agreement and the Final Approval Order. Within seven (7) business days of receiving an Opt-Out Election, the Settlement Administrator shall provide counsel for the Fifth Third/Vantiv Defendants and Settlement Class Counsel with a copy of the election and a report indicating the number of Eligible Calls associated with the Settlement Class Member who made the election.

**19. Objections:** Any Settlement Class Member who has not submitted a timely Opt-Out Election and who wishes to object to the fairness, reasonableness, or adequacy of the proposed settlement, to the attorneys’ fees and costs requested by Settlement Class Counsel, or the requested incentive awards, must do so by filing a written objection with the Court no later than forty-nine (49) days after the Notice Date (the “Objection Deadline”) and serving a copy of the objection on Settlement Class Counsel and counsel for the Fifth Third/Vantiv Defendants. It shall be the objector’s responsibility to ensure timely receipt of any objection by the Court, Settlement Class Counsel, and the counsel for the Fifth Third/Vantiv Defendants. To be considered by the Court, the objection must include: (i) the name and case number of the Lawsuit: *Sat Narayan d/b/a Express Hauling, et al. v. Fifth Third Bank, et al.*, Case No. 1:16-cv-11223; (ii) the Settlement Class Member’s name, address, telephone number, and email address; (iii) the full name, title, business address, business telephone number, and business email address of the person submitting the objection for the Settlement Class Member; (iv) a representation that the person submitting the objection has the authority to do so on behalf of the Settlement Class Member; (v) a statement of each objection and the relief that the Settlement Class Member is requesting; and (vi) a statement of whether the Settlement Class Member intends to appear at the final approval hearing. Any Settlement Class Member who files and serves a written objection as described in this Paragraph 19 has the option to appear at the final approval hearing to object to the fairness, reasonableness, or adequacy of this proposed settlement, to the attorneys’ fees and costs requested by Settlement Class Counsel, or the requested incentive awards. However, Settlement Class Members intending to make an appearance at the final approval hearing must include a statement of intention to appear in the written objection filed with the Court and delivered to Settlement Class Counsel and counsel for the Fifth Third/Vantiv Defendants, and only those Settlement Class Members who include such a statement may speak at the final approval hearing. Settlement Class Members may retain counsel to object to the settlement and/or appear at the final approval hearing. If a Settlement Class Member is not a sole proprietorship or is otherwise a separate business entity, it may be required to make its objection and/or appear at the final approval hearing through an attorney. If a Settlement Class Member makes an objection or appears at the final approval hearing through an attorney, the Settlement Class Member will be responsible for his or her personal attorney’s fees and costs. Any Settlement Class Member who fails to file a timely objection shall have waived any right to object to this Agreement and shall not be permitted to object at the final approval hearing and shall be foreclosed from seeking any review of this settlement by appeal or other means.

## VII. DISMISSAL AND RELEASE

**20. Dismissal:** In connection with the motion for final approval of the settlement, the Parties, through counsel, shall submit to the Court a proposed order granting final approval of the settlement and dismissal of the Lawsuit as it relates to claims against the Fifth Third/Vantiv Defendants with prejudice. The Parties shall jointly agree on the contents of the proposed order, which shall, among other things, provide that the Court will retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement (the “Proposed Final Approval Order”). All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

### **21. Plaintiffs and Settlement Class Member Release.**

**a. Release Upon Final Approval Order:** Upon entry of the Final Approval Order, Plaintiffs and each Settlement Class Member who has not timely submitted an Opt-Out Election, on behalf of themselves and each of their respective agents, administrators, employees, representatives, successors, assigns, trustees, joint venturers, partners, legatees, heirs, personal representatives, predecessors, and attorneys (collectively the “Releasing Parties”), hereby jointly and severally release and forever discharge the Fifth Third/Vantiv Defendants and each of their respective former, present, and future direct and indirect parents, affiliates, subsidiaries, successors, predecessors, creditors, assigns, and assignees and all of their respective former, present, and future officers, directors, shareholders, managers, indemnitees, employees (whether acting in such capacity or individually), agents (alleged, apparent, or actual) other than those described in Paragraph 21.b, joint venturers, representatives, attorneys, accountants, auditors, independent contractors, successors, trusts, trustees, partners, owners, associates, principals, advisors, divisions, subdivisions, departments, insurers, reinsurers, members, brokers, consultants, wholesalers, resellers, distributors, retailers, and vendors and all persons acting by, through, under, or in concert with them, or any of them (collectively, and except as specifically provided in Paragraph 21.b. below, the “Released Parties”), from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have arising out of, relating to, or otherwise in connection with the subject matter of the Second Amended Complaint and the recording of calls as alleged in the Second Amended Complaint, including but not limited to claims based on the Eligible Calls or claims for violation of CIPA, including but not limited to Section 632 and Section 632.7, or any other federal, state, or local statute, regulation, or common law relating to the recording of telephone calls at any time prior to the Final Settlement Date (the “Released Claims”).

**b. Claims Not Released:** Unless otherwise requested by the Fifth Third/Vantiv Defendants pursuant to Paragraph 28 with respect to Ironwood, John Lewis and Dewitt Lovelace, this release does not apply to or limit any action, whether pursued through the Lawsuit or any other claim or proceeding, by any Plaintiffs or Settlement

Class Members against Ironwood, John Lewis, Dewitt Lovelace, IPS, Brian Bentley, Adam Bentley, or Andrew Bentley.

**c. Unknown Claims:** The Parties expressly assume the risk that acts, omissions, matters, causes, or things may have occurred that they do not know or do not suspect to exist as of the Opt-Out Deadline, which if known by the Parties might have affected their decision with respect to this Settlement Agreement. To the extent permitted by applicable law, the Parties hereby waive the terms and provisions of any statute, rule, or doctrine of the United States or any state or territory of the United States, or principle of common law or foreign law that either: (i) narrowly construes releases purporting by their terms to release claims in whole or in part based upon, arising from, or related to such acts, omissions, matters, causes, or things; or (ii) restricts or prohibits the releasing of such claims, including without limitation California Civil Code § 1542 or anything similar, comparable, or equivalent to California Civil Code § 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Each Party understands and acknowledges the significance and consequences of this waiver of California Civil Code § 1542 and of similar, comparable, or equivalent statutes and rules, and confirms that it has either discussed or been given an opportunity to discuss such matters with counsel of that Party's choice. The Releasing Parties acknowledge and understand that each is a "creditor" within the meaning of California Civil Code § 1542.

**d.** The Parties may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but each Releasing Party, upon the date of this Settlement Agreement, shall be deemed to have fully, forever, and irrevocably released, remised, discharged, and waived each and every Released Claim against each Released Party. The Parties acknowledge that the foregoing waiver was separately bargained for and is a key element of this Settlement Agreement.

## **VIII. MISCELLANEOUS PROVISIONS**

**22. Settlement Class Definition:** For settlement purposes, the Parties have agreed to define the settlement class as follows:

All call recipients that received a telephone call to a California telephone number from an employee, agent, or other representative of, or from a call center operated by, International Payment Services, LLC or Ironwood Financial, LLC, or one of their affiliates, between May 8, 2014 and July 29, 2016, who appeared on a lead

list maintained by International Payment Services, LLC or Ironwood Financial, LLC, while the call recipient was physically present in California.

Excluded from the class are (i) the Judge and Magistrate Judge presiding over this Lawsuit and members of their immediate families; and (ii) the Fifth Third/Vantiv Defendants and their employees, subsidiaries, parent companies, successors, and predecessors.

Any call recipient meeting the definition of this class shall be referred to herein as a “Settlement Class Member” and, collectively, as the “Settlement Class” or “Settlement Class Members.”

The Fifth Third/Vantiv Defendants dispute that the Putative Fifth Third-IPS Classes and Putative Fifth Third-Ironwood Classes would be manageable or that issues common to those classes predominate over individual issues and deny that the Putative Fifth Third-IPS Classes and Putative Fifth Third-Ironwood Classes should be certified on the claims asserted in the Lawsuit. However, solely for the purposes of avoiding the expense and inconvenience of further litigation, the Fifth Third/Vantiv Defendants do not oppose the certification of the Settlement Class, for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(b)(3). Preliminary certification of the Settlement Class for settlement purposes shall not be deemed a concession that certification of the Putative Fifth Third-IPS Classes and Putative Fifth Third-Ironwood Classes or any litigation class is appropriate, nor would the Fifth Third/Vantiv Defendants be precluded from opposing class certification in further proceedings in the Lawsuit if this Agreement does not receive final approval. If the Final Settlement Date does not occur for any reason whatsoever, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any proceedings involving the Fifth Third/Vantiv Defendants. No evidence of this Agreement or any other agreements made by or entered into by the Fifth Third/Vantiv Defendants in connection with this Agreement may be used by Plaintiffs, any Settlement Class Member, or any other persons or entities to establish any of the elements of class certification in any other proceedings against the Fifth Third/Vantiv Defendants or for any purpose other than to effectuate the class action settlement in accordance with the terms of this Agreement.

**23. Preliminary Approval Motion:** Upon full execution of this Agreement, Plaintiff will file a motion for preliminary approval of this class action settlement in accordance with the terms of this Agreement. The Fifth Third/Vantiv Defendants will not oppose a motion to certify the Settlement Class in accordance with the terms of this Agreement. The motion for preliminary approval shall submit to the Court a proposed order granting preliminary approval of the settlement and certification of the Settlement Class for settlement purposes. The Parties shall jointly agree on the contents of the proposed order (the “Proposed Preliminary Approval Order”).

**24. Final Approval Hearing:** Contemporaneously with the motion for preliminary approval of the settlement of the Lawsuit, the Parties shall request that the Court schedule a final approval hearing no earlier than thirty-five days (35) days after the Claims Deadline. No later than seven (7) days prior to the final approval hearing, Plaintiffs shall file a motion for final approval of the settlement and entry of the Proposed Final Approval Order. Plaintiffs shall include with this motion a list of all Settlement Class Members who validly and timely submitted an Opt-Out Election.

**25. Status of Lawsuit If Settlement Is Not Approved:** This Agreement is being entered into for settlement purposes only. There is no settlement if (i) the Court conditions the preliminary or final approval of this settlement on any substantive modifications of this Agreement (other than modifications to the time periods and dates described herein, additional notice to the class, or other procedural aspects of the Agreement) that are not acceptable to all Parties; (ii) if the Court does not approve this Agreement or enter the Preliminary Approval Order or the Final Approval Order; or (iii) if the Final Settlement Date does not occur for any reason. In such event, then (i) this Agreement is terminated, will be deemed null and void *ab initio*, and no Party shall be bound by any of its terms; (ii) to the extent applicable, any preliminary order approving the settlement or certifying the Settlement Class shall be vacated; (iii) the Parties shall request that the Court, following a further conference with the Parties, establish a schedule for the continuation of the Lawsuit; (iv) there will have been no admission of liability or that a class should be certified and no waiver of any claim or defense of any kind whatsoever; and (v) neither the settlement nor any of its provisions or the fact that this Agreement has been made shall be admissible in the Lawsuit or in any other action for any purpose whatsoever.

**26. Right to Set Aside Settlement.** The Settlement Administrator shall advise the Parties of the number and identity of valid and timely opt outs within seven (7) days after the Opt-Out Deadline. The Fifth Third/Vantiv Defendants shall have the right to set aside or rescind this Agreement, in the sole exercise of their discretion, if more than 500 Settlement Class Members opt out of the settlement. In order to exercise this right, the Fifth Third/Vantiv Defendants must inform Settlement Class Counsel of their decision to set aside the settlement in writing within fourteen (14) days after the Opt-Out Deadline. In the event the Fifth Third/Vantiv Defendants exercise their discretion to set aside the settlement, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection with this settlement and this Agreement shall have been made without prejudice to the Parties, shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law, and shall not be used in any manner for any purpose. All Parties shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court. In such event, the Parties to the Lawsuit shall move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Agreement.

**27. Additional Claims Period:** If the number of Eligible Calls for which a claim was submitted pursuant to Paragraph 3 above is insufficient to exhaust the entire Net Settlement Fund at the maximum payment of Five Thousand Dollars (\$5,000) per Eligible Call, then an additional opportunity for Settlement Class Members to submit a claim shall be offered as follows: Within twenty-eight (28) days after the Claims Deadline, the Settlement Administrator shall mail an additional communication and Claim Form to all Settlement Class Members who did not submit a claim and afford them an additional thirty-five (35) days to submit a claim by mail or online. The Parties will jointly agree on the content of the communication. If, after both this additional claims period and the Final Settlement Date have occurred, the number of Eligible Calls for which a claim was submitted is insufficient to exhaust the entire Net Settlement Fund at the maximum payment of Five Thousand Dollars (\$5,000) per Eligible Call, then any remaining amounts of the Net Settlement Fund will be paid to the Electronic Frontier Foundation.

**28. Bankruptcy Case:** The Fifth Third/Vantiv Defendants agree that they shall take all steps necessary, if any, in the Bankruptcy Case in furtherance of the Settlement Agreement. The Fifth Third/Vantiv Defendants will move or take steps necessary to adjourn the Derivative Standing Motion (Doc. 179) and the Claims Bar Date Motion (Doc. 210) subject to the Bankruptcy Court's calendar to a date subsequent to the Final Settlement Date. Plaintiffs agree not to take any actions that interfere with the resolution of claims made by the Fifth Third/Vantiv Defendants in the Ironwood Bankruptcy or the approval of this Settlement Agreement. Promptly following the Final Settlement Date, the Fifth Third/Vantiv Defendants will withdraw opposition to dismissal of Lewis and Lovelace and agree not to implead Ironwood in the Lawsuit. If the Fifth Third/Vantiv Defendants so request prior to the entry of a Final Approval Order, Plaintiffs shall dismiss Lewis and Lovelace with prejudice from the Lawsuit and the release in Paragraph 21 (the "Release") shall extend to Settlement Class Members' claims against Ironwood, Lewis and Lovelace notwithstanding any provision of Paragraph 21.b that may be to the contrary. The Fifth Third/Vantiv Defendants may take any action in the Bankruptcy Case that it deems to be in its best interests provided that no such action reduces or eliminates the Fifth Third/Vantiv Defendants' obligations under the Settlement Agreement. The Fifth Third/Vantiv Defendants agree that upon the Final Settlement Date, this Settlement Agreement, to the extent permissible, will survive and remain unaffected by any action, order, or finding of the Bankruptcy Court; and further agree that this Settlement Agreement is not subject to the approval of the Bankruptcy Court and shall become effective on its own terms.

**29. Change of Time Periods:** All procedural time periods and dates described in this Agreement are subject to the Court's approval and subject to modification. These time periods and dates may be changed by the Court or by the Parties' written agreement with or without notice to the Settlement Class as the Court may direct.

**30. Weekend and Holiday Deadlines:** If any deadline established by this Agreement falls on a weekend or court holiday, any such deadline shall be deemed to be extended to the next business day.

**31. Binding on Successors:** Plaintiffs represent and warrant that they have not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that they are fully entitled to release same. This Agreement binds and benefits the Parties' respective successors, assigns, legatees, heirs, and personal representatives. This agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary to this Agreement.

**32. Entire Agreement:** This Agreement and the attached exhibits contain the entire agreement and understanding of the Parties with respect to the matters set forth herein, and constitute the complete, final, and exclusive embodiment of their agreement with respect to the settlement of the Lawsuit. This Agreement and the attached exhibits supersede any and all prior agreements, negotiations, arrangements, or understandings, whether written or oral, express or implied, between them relating to the subject matter hereof. The Parties agree that there are no understandings with respect to the settlement of the Lawsuit, whether written, oral, express,

implied, or otherwise, except as set forth in this Agreement and the attached exhibits, and that in entering into this Agreement, no Party has relied, or is entitled to rely, upon any promise, inducement, representation, statement, assurance, or expectation unless it is contained herein in writing.

**33. Exhibits:** The exhibits to this Agreement are integral parts of the Agreement and are incorporated into this Agreement as though fully set forth herein.

**34. Recitals:** The Recitals are incorporated by this reference and are part of this Agreement.

**35. Modifications and Amendments:** No amendment, change, or modification to this Agreement will be valid unless in writing signed by the Parties or their counsel.

**36. Construction and Interpretation:** Neither the Parties nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision in this Agreement. This Agreement has been, and must be construed to have been, drafted by all the Parties to it so that any rule that construes ambiguities against the drafter will have no force or effect.

**37. Counterparts:** This Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitutes one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies or PDF copies of executed copies of this Agreement shall be treated as originals.

**38. Waiver:** Except as set forth above with respect to the Claims Deadline, the Objection Deadline, and the Opt-Out Deadline, no delay on the part of any Party in the exercise of any right, power, or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude the further exercise thereof, or the exercise of any other right, power, or remedy. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

**39. Governing Law:** The rights and obligations of the Parties under this Agreement shall be governed and interpreted in accordance with the laws of the State of Illinois and without regard to conflicts of law principles.

**40. Attorneys' Fees and Costs:** Other than the payment of Settlement Class Counsel's attorneys' fees and costs in accordance with Paragraph 17 above, each Party shall bear their own attorneys' fees and costs relating in any way to the Lawsuit or this Agreement, or the subject matter of any of them.

**41. Taxes:** Under no circumstances will the Fifth Third/Vantiv Defendants have any liability for any taxes or tax expenses under this Agreement. Plaintiffs, Settlement Class Counsel, Settlement Class Members, and the recipients of any *cy pres* funds are responsible for



any taxes on their respective recoveries or awards. Nothing in this Agreement, or statements made during the negotiation of its terms, shall constitute tax advice by the Fifth Third/Vantiv Defendants or the Fifth Third/Vantiv Defendants' counsel.

**42. No Admission of Liability:** This Agreement reflects the Parties' compromise and settlement of disputed claims. The Fifth Third/Vantiv Defendants are entering into this Agreement in order to compromise and resolve disputed claims that they believe have no validity so as to avoid further litigation. The Fifth Third/Vantiv Defendants, by entering into this Agreement, do not admit liability and, in fact, expressly deny liability. The provisions of this Agreement, and all related drafts, communications and discussions, and any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law by any Party. To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations, actions or proceedings connected with it, shall be admissible as evidence in this Lawsuit or any other pending or future civil, criminal, or administrative action or proceeding for any purpose whatsoever other than seeking preliminary and final approval of this Agreement or in any proceeding brought to enforce this Agreement.

**43. Parties Represented by Counsel:** The Parties acknowledge that: (i) Plaintiffs have been represented by independent counsel of their own choosing; (ii) the Fifth Third/Vantiv Defendants have been represented by independent counsel of their own choosing; (iii) they have read this Agreement and are fully aware of its contents; and (iv) their respective counsel fully explained to them the Agreement and its legal effect. The Parties executed this Agreement voluntarily and without duress or undue influence, and intend to be legally bound by this Agreement.

**44. Authorization:** The Parties represent that they each have all necessary power and authority to enter into this Agreement and to carry out such Party's obligations hereunder. Each signatory below represents and warrants that he or she is fully entitled and duly authorized to enter into this Agreement on behalf of the Party on whose behalf he or she is signing.

**45. Support and Cooperation to Obtain Court Approval and in Administering the Settlement:** The Parties agree, subject to their legal obligations, to support this Agreement and to cooperate to the extent reasonably necessary in producing information, executing any documents, or taking any additional actions which are consistent with and which may be necessary or appropriate to secure the Court's preliminary and final approval of this Agreement, or to effectuate the terms and administration of this Agreement.

**46. Other Communications:** Neither the Parties nor their counsel will issue press releases or make any statements to the press regarding this settlement that includes the names of any of the Fifth Third/Vantiv Defendants, unless all Parties, each in their sole discretion, agree to such press releases or statements. Neither the Plaintiffs nor their counsel will make a statement of any kind to any third party regarding the settlement prior to applying for preliminary approval, with the exception of communications with the Settlement Administrator. Neither the Parties nor their counsel shall include content concerning this settlement on any website (including blogs), on social media platforms, journals, articles, presentation materials, or in any promotional or

marketing materials or publications that includes the names of any of the Fifth Third/Vantiv Defendants, unless all Parties, each in their sole discretion, agree to such content. Notwithstanding the foregoing, this provision (i) shall not prohibit Settlement Class Counsel from communicating with any Settlement Class Member regarding the Lawsuit or this settlement; and (ii) shall not apply to statements made by any of the Fifth Third/Vantiv Defendants or their respective affiliates as part of filings with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, any related disclosures or communications with shareholders or investors, or any other required disclosures to regulators.

**47. Notice to Counsel:** All notices to Settlement Class Counsel provided for herein shall be sent by overnight mail and email to:

Myron M. Cherry  
mcherry@cherry-law.com  
Jacie C. Zolna  
jzolna@cherry-law.com  
Benjamin R. Swetland  
bswetland@cherry-law.com  
Myron M. Cherry & Associates, LLC  
30 North LaSalle Street, Suite 2300  
Chicago, Illinois 60602

All notices to counsel for the Fifth Third/Vantiv Defendants provided for herein shall be sent by overnight mail and email to:

John Touhy  
jtouhy@bakerlaw.com  
Baker & Hostetler LLP  
One North Wacker Drive, Suite 4500  
Chicago, Illinois 60606

Paul Karlsgodt  
pkarlsgodt@bakerlaw.com  
Baker & Hostetler LLP  
1801 California Street, Suite 4400  
Denver, Colorado 80202

The notice recipients and addresses designated above may be changed by written notice.

**The remainder of this page is intentionally left blank.**

Dated: March 3, 2022

**SAT NARAYAN d/b/a EXPRESS HAULING**



By: Sat Narayan

Title: owner

Individually and in a representative capacity

Dated: March     , 2022

**ROBERT MEYER d/b/a MANGIA NOSH**

By: Robert Meyer

Title: \_\_\_\_\_

Individually and in a representative capacity

Dated: March     , 2022

**TAYSIR TAYEH d/b/a CHIEF'S MARKET**

By: Taysir Tayeh

Title: \_\_\_\_\_

Individually and in a representative capacity

Dated: March     , 2022

**SETTLEMENT CLASS COUNSEL**

Myron M. Cherry, as Settlement Class Counsel

Jacie C. Zolna, as Settlement Class Counsel

Benjamin R. Swetland, as Settlement Class Counsel

Dated: March \_\_\_\_, 2022

**SAT NARAYAN d/b/a EXPRESS HAULING**

\_\_\_\_\_  
By: Sat Narayan

Title: \_\_\_\_\_

Individually and in a representative capacity

Dated: March 4<sup>th</sup>, 2022

**ROBERT MEYER d/b/a MANGIA NOSH**



\_\_\_\_\_  
By: Robert Meyer

Title: OWNER

Individually and in a representative capacity

Dated: March \_\_\_\_, 2022

**TAYSIR TAYEH d/b/a CHIEF'S MARKET**

\_\_\_\_\_  
By: Taysir Tayeh

Title: \_\_\_\_\_

Individually and in a representative capacity

Dated: March \_\_\_\_, 2022

**SETTLEMENT CLASS COUNSEL**

\_\_\_\_\_  
Myron M. Cherry, as Settlement Class Counsel

\_\_\_\_\_  
Jacie C. Zolna, as Settlement Class Counsel

\_\_\_\_\_  
Benjamin R. Swetland, as Settlement Class Counsel

Dated: March \_\_\_\_, 2022

**SAT NARAYAN d/b/a EXPRESS HAULING**

\_\_\_\_\_  
By: Sat Narayan

Title: \_\_\_\_\_

Individually and in a representative capacity

Dated: March \_\_\_\_, 2022

**ROBERT MEYER d/b/a MANGIA NOSH**

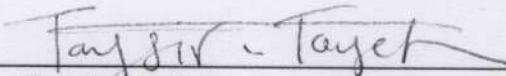
\_\_\_\_\_  
By: Robert Meyer

Title: \_\_\_\_\_

Individually and in a representative capacity

Dated: March 3, 2022

**TAYSIR TAYEH d/b/a CHIEF'S MARKET**

  
\_\_\_\_\_

By: Taysir Tayeh

Title: owner

Individually and in a representative capacity

Dated: March \_\_\_\_, 2022

**SETTLEMENT CLASS COUNSEL**

\_\_\_\_\_  
Myron M. Cherry, as Settlement Class Counsel

\_\_\_\_\_  
Jacie C. Zolna, as Settlement Class Counsel

\_\_\_\_\_  
Benjamin R. Swetland, as Settlement Class Counsel

Dated: March \_\_\_\_, 2022

**SAT NARAYAN d/b/a EXPRESS HAULING**

---

By: Sat Narayan

Title: \_\_\_\_\_

Individually and in a representative capacity

Dated: March \_\_\_\_, 2022

**ROBERT MEYER d/b/a MANGIA NOSH**

---

By: Robert Meyer

Title: \_\_\_\_\_

Individually and in a representative capacity

Dated: March \_\_\_\_, 2022

**TAYSIR TAYEH d/b/a CHIEF'S MARKET**

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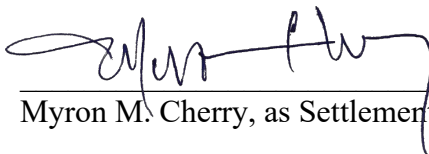
By: Taysir Tayeh

Title: \_\_\_\_\_

Individually and in a representative capacity

Dated: March 3, 2022

**SETTLEMENT CLASS COUNSEL**



---

Myron M. Cherry, as Settlement Class Counsel

---

Jacie C. Zolna, as Settlement Class Counsel

---

Benjamin R. Swetland, as Settlement Class Counsel

Dated: March \_\_\_\_, 2022

**SAT NARAYAN d/b/a EXPRESS HAULING**

\_\_\_\_\_  
By: Sat Narayan

Title: \_\_\_\_\_

Individually and in a representative capacity

Dated: March \_\_\_\_, 2022

**ROBERT MEYER d/b/a MANGIA NOSH**

\_\_\_\_\_  
By: Robert Meyer

Title: \_\_\_\_\_

Individually and in a representative capacity

Dated: March \_\_\_\_, 2022

**TAYSIR TAYEH d/b/a CHIEF'S MARKET**

\_\_\_\_\_  
By: Taysir Tayeh

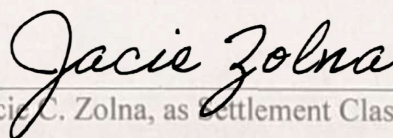
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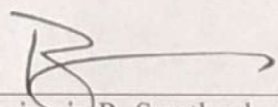
Individually and in a representative capacity

Dated: March 3, 2022

**SETTLEMENT CLASS COUNSEL**

\_\_\_\_\_  
Myron M. Cherry, as Settlement Class Counsel

  
\_\_\_\_\_  
Jacie C. Zolna, as Settlement Class Counsel

  
\_\_\_\_\_  
Benjamin R. Swetland, as Settlement Class Counsel


Dated: March \_\_\_\_, 2022

**FIFTH THIRD BANK, N.A.**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_


Dated: March 8, 2022

**VANTIV, INC. and WORLDPAY, INC. n/k/a/ WORLDPAY, LLC.**

  
\_\_\_\_\_  
By: Marc M. Mayo  
Title: Corporate EVP and Chief Legal Officer

Dated: March 8, 2022

**NATIONAL PROCESSING COMPANY  
n/k/a WORLDPAY ISO, INC.**

  
\_\_\_\_\_  
By: Marc M. Mayo  
Title: Corporate EVP and Chief Legal Officer



Dated: March 10, 2022

**FIFTH THIRD BANK, N.A.**

Ellen M. Maniaci  
By: Ellen M. Maniaci  
Title: Vice President & Senior Counsel

Dated: March \_\_\_\_\_, 2022

**VANTIV, INC. and WORLDPAY, INC. n/k/a/ WORLDPAY, LLC.**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: March \_\_\_\_\_, 2022

**NATIONAL PROCESSING COMPANY  
n/k/a WORLDPAY ISO, INC.**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

# **Exhibit 1**

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

SAT NARAYAN d/b/a EXPRESS HAULING, *et al.*, )  
 )  
 Plaintiffs, ) Case No. 1:16-cv-11223  
 )  
 v. ) Chief Judge Rebecca R. Pallmeyer  
 )  
 FIFTH THIRD BANK, *et al.*, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

PLEASE READ THIS NOTICE CAREFULLY. IT RELATES TO THE  
PROPOSED SETTLEMENT OF A CLASS ACTION AND CONTAINS  
IMPORTANT INFORMATION ABOUT YOUR OR YOUR  
BUSINESS'S RIGHTS.

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

**Call records indicate that you or your business received at least one telephone call from International Payment Services, LLC or Ironwood Financial between May 8, 2014 and July 29, 2016 in an effort to set an in-person sales appointment. Based on those records, you or your business are eligible for a settlement payment if you sign and return the enclosed claim form or if you submit a claim online at **CallSettlement.com** on or before [date].**

The settlement provides for a **payment for each eligible call you or your business received, not to exceed \$5,000 per call**, but you need to submit a claim as described below in order to be eligible to receive payment. It is likely that payments will not reach \$5,000 per call, **but it is estimated that individual settlement payments will be in the hundreds of dollars each.** It is not possible at this time, however, to know the exact amount of each payment.

**I. What is this notice about?**

This Notice is being sent to notify you of a class action lawsuit regarding the recording of certain appointment setting calls to California individuals or businesses. On [insert date], the Court preliminarily approved a settlement of the Lawsuit. The purpose of this Notice is to inform you of the Lawsuit and the proposed settlement. In addition, this Notice will advise you of what to do if you or your business wants to remain a part of the Lawsuit, what to do if you or your business wants to exclude itself from the Lawsuit, and how joining or not joining the Lawsuit may affect you or your business's legal rights. **This settlement is in addition to a previous settlement involving different defendants, referred to as the Wells Fargo Defendants. If you or your business previously received a notice relating to the prior settlement with the Wells Fargo Defendants, you are still eligible to participate in this settlement and receive an additional settlement payment, but you need to submit a claim in this settlement to do so.**

## II. What is the Lawsuit about?

On December 9, 2016, a class action lawsuit was filed in the United States District Court for the Northern District of Illinois, Eastern Division, now entitled *Sat Narayan d/b/a Express Hauling, et al. v. Fifth Third Bank, et al.*, Case No. 1:16-cv-11223 (the “Lawsuit”). The Lawsuit alleged that independent sales organizations named International Payment Services, LLC (“IPS”) and Ironwood Financial, LLC (“Ironwood”), recorded certain calls to California businesses without disclosing the fact that the call was being recorded in violation of Sections 632 and 632.7 of the California Invasion of Privacy Act (“CIPA”). The Lawsuit further alleged that the purpose of these calls was to set in-person sales appointments with the businesses to sell credit card processing equipment and services on behalf of Fifth Third Bank, N.A. (“Fifth Third”), Vantiv, Inc. (“Vantiv”), and National Processing Company (“NPC”) (collectively, “the Fifth Third/Vantiv Defendants”), all of whom are named as defendants in the Lawsuit. The Fifth Third/Vantiv Defendants did not themselves make the calls and deny any wrongdoing or liability in connection with the Lawsuit.

## III. What are the benefits of the proposed settlement?

Under the proposed settlement, the Fifth Third/Vantiv Defendants will make a payment of \$50,000,000 to create a fund on behalf of the Settlement Class Members (the “Settlement Fund”). Settlement Class Members who do not exclude themselves from the Lawsuit are eligible for a cash payment from the Settlement Fund for each call that is covered under the class definition set forth in Section VII below (an “Eligible Call” as defined in the Settlement Agreement). Settlement Class Members who received multiple Eligible Calls are entitled to a cash payment for each Eligible Call. The cash payment could be as high as \$5,000 per call depending on how many claims are submitted. It is not possible at this time, however, to know the exact amount of each payment. It is estimated, however, that individual settlement payments could be in the hundreds of dollars each.

## IV. How do I receive a settlement payment?

**In order to receive the cash payment described in this Notice you must complete and sign the enclosed claim form and mail it to the Settlement Administrator, or you can submit a claim online through the settlement website at [CallSettlement.com](http://CallSettlement.com), by the DUE DATE of [insert date].** A pre-paid, self-addressed envelope is provided with this Notice that you can use to mail in the claim form.

Regardless of whether you mail the claim form or submit a claim online, **you must do so by the DUE DATE of [insert date]** to be eligible to receive a payment. Settlement payments will only be issued if the proposed settlement is granted final approval by the Court. If your settlement payment equals or exceeds \$600 you may be required to submit a completed IRS Form W9 at a later date.

## V. Why is there a proposed settlement?

The Court has not decided in favor of either side in the Lawsuit. Plaintiffs and Settlement Class Counsel believe the claims have merit. The Fifth Third/Vantiv Defendants do not believe the claims have merit. The Fifth Third/Vantiv Defendants are settling to avoid the expense, inconvenience, and inherent risk of litigation. Plaintiffs and Settlement Class Counsel believe that the proposed settlement is in the best interest of Settlement Class Members because it provides appropriate recovery and other relief now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals, including the possibility of no recovery for Settlement Class Members whatsoever.

**VI. What is a class action lawsuit?**

A class action lawsuit is a legal action in which one or more people represent a large group, or class, of people. The purpose of a class action lawsuit is to resolve at one time similar legal claims of the members of the group.

**VII. Who is in the class?**

On [insert date], the Court certified the Lawsuit as a class action for settlement purposes and defined the class as follows:

All call recipients that received a telephone call to a California telephone number from an employee, agent, or other representative of, or from a call center operated by, International Payment Services, LLC or Ironwood Financial, LLC, or one of their affiliates, between May 8, 2014 and July 29, 2016, who appeared on a lead list maintained by International Payment Services, LLC or Ironwood Financial, LLC, while the call recipient was physically present in California.

Any call recipient meeting the definition of this class shall be referred to herein as a “Settlement Class Member” and, collectively, as the “Settlement Class” or “Settlement Class Members.”

**VIII. When and where is the final approval hearing?**

**The final approval hearing has been set for [insert date and time] before the Honorable Rebecca R. Pallmeyer in Courtroom 2541 of the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604. The final approval hearing may be conducted remotely via teleconference. Please check the settlement website for information on whether the final approval hearing will be conducted remotely via teleconference and, if so, how to participate: CallSettlement.com**

The Court will hear any comments from the parties or objections concerning the fairness of the proposed settlement at the final approval hearing, including the amount requested for attorneys’ fees and costs or the requested incentive awards.

You **do not** need to attend the final approval hearing to remain a Settlement Class Member or to obtain any benefits under the proposed settlement. You or your attorney may attend the hearing, at you or your business’s own expense. You or your business do not need to attend this hearing to have a properly filed and served written objection considered by the Court.

**IX. How can a Settlement Class Member be excluded from the Lawsuit and the settlement?**

Any Settlement Class Member has the right to be excluded from the Lawsuit by written request. If you wish to be excluded from the case, you must mail a written request to the Settlement Administrator at the address set forth below stating that you or your business wants to be excluded from the class. All exclusion requests must include (i) the name and case number of the Lawsuit: *Sat Narayan d/b/a Express Hauling, et al. v. Fifth Third Bank, et al.*, Case No. 1:16-cv-11223; (ii) the full name, address, telephone number, and email address of the Settlement Class Member electing exclusion; (iii) a statement that the Settlement Class Member elects to be excluded from the Lawsuit and elects not to participate in the settlement; (iv) the full name, title, business address, business telephone number, and business email address of the person submitting the written election for the Settlement Class Member; and (v) a representation that the person submitting the written election has the authority to do so on behalf of the Settlement Class Member. A

Settlement Class Member's exclusion request must be postmarked no later than **the DUE DATE of [insert date]** and sent to the following address: **[insert mailing address]**.

If you properly and timely elect to be excluded from the case, you or your business will not have any rights as a Settlement Class Member pursuant to the proposed settlement, will not be eligible to receive any monetary payment under the proposed settlement, will not be bound by any further orders or the judgment entered in the Lawsuit, and will remain able to pursue any claims alleged in the Lawsuit against the Fifth Third/Vantiv Defendants on your own and at your own expense and with your own counsel. If you proceed on an individual basis after electing to be excluded from the Lawsuit you may receive more, or less, of a benefit than you would otherwise receive under this proposed settlement or no benefit at all. If you or your business does not elect to be excluded from the case, you will be deemed to have consented to the Court's jurisdiction and to have released the claims at issue against the Fifth Third/Vantiv Defendants as explained below, and will otherwise be bound by the proposed settlement.

If you previously excluded yourself or your business from the prior settlement with the Wells Fargo Defendants, you still must submit a written exclusion request to exclude yourself from this settlement with the Fifth Third/Vantiv Defendants.

**X. How can a Settlement Class Member object to the settlement?**

If you do not exclude yourself from the Lawsuit, you can comment in opposition to the settlement, including the amount requested for attorneys' fees and costs or the requested incentive awards, which is known as an objection, and you have the right to appear before the Court to express your opposition. Your written objection must be submitted in writing and filed with the Clerk of Court by **the DUE DATE of [insert date]**. The address for the Clerk of the Court is: Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604. You must also send copies of your written objection to the attorneys for the parties at the following addresses:

**Settlement Class Counsel:**

Myron M. Cherry  
Jacie C. Zolna  
Benjamin R. Swetland  
Myron M. Cherry & Associates, LLC  
30 North LaSalle Street, Suite 2300  
Chicago, Illinois 60602

**Counsel for the Fifth Third/Vantiv Defendants:**

John Touhy  
Baker & Hostetler LLP  
One North Wacker Drive, Suite 4500  
Chicago, Illinois 60606

Paul Karlsgodt  
pkarlsgodt@bakerlaw.com  
Baker & Hostetler LLP  
1801 California Street, Suite 4400  
Denver, Colorado 80202

To be valid and considered by the Court, any such written objection must include the following information: (i) the name and case number of the Lawsuit: *Sat Narayan d/b/a Express Hauling, et al. v. Fifth Third Bank, et al.*, Case No. 1:16-cv-11223; (ii) the Settlement Class Member's name, address, telephone number, and email address; (iii) the full name, title, business address, business telephone number, and business email address of the person submitting the objection for the Settlement Class Member; (iv) a representation that the person submitting the objection has the authority to do so on behalf of the Settlement Class Member; (v) a statement of each objection and the relief that the Settlement Class Member is requesting; and (vi) a statement of whether the Settlement Class Member intends to appear at the final approval hearing. Settlement Class Members may retain counsel to object to the settlement and/or appear at the final approval hearing. If a Settlement Class Member is not a sole proprietorship or is otherwise a separate business entity, it may be required to make its objection or appear at the final approval hearing through an attorney. If a

Settlement Class Member makes an objection or appears at the final approval hearing through an attorney, the Settlement Class Member will be responsible for his or her personal attorney's fees and costs. Any Settlement Class Member who fails to file a timely objection shall have waived any right to object to this Agreement and shall not be permitted to object at the final approval hearing and shall be foreclosed from seeking any review of this settlement by appeal or other means.

**XI. What is the effect of final settlement approval?**

If the Court approves the proposed settlement after the final approval hearing, it will enter a judgment dismissing the Lawsuit with prejudice and releasing all claims as described in this paragraph. If you do not elect to be excluded from the case, the proposed settlement will be your sole mechanism for obtaining any relief. All Settlement Class Members who do not timely elect to opt out of the proposed settlement, and each of their respective agents, administrators, employees, representatives, successors, assigns, trustees, joint venturers, partners, legatees, heirs, personal representatives, predecessors, and attorneys jointly and severally release and forever discharge the Fifth Third/Vantiv Defendants and each of their respective former, present, and future direct and indirect parents, affiliates, subsidiaries, successors, predecessors, creditors, assigns, and assignees and all of their respective former, present, and future officers, directors, shareholders, managers, indemnitees, employees (whether acting in such capacity or individually), agents (alleged, apparent, or actual) other than those described in Paragraph 21.b. of the Settlement Agreement, joint venturers, representatives, attorneys, accountants, auditors, independent contractors, successors, trusts, trustees, partners, owners, associates, principals, advisors, divisions, subdivisions, departments, insurers, reinsurers, members, brokers, consultants, wholesalers, resellers, distributors, retailers, and vendors and all persons acting by, through, under, or in concert with them, or any of them, from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have arising out of, relating to, or otherwise in connection with the subject matter of the Second Amended Complaint and the recording of calls as alleged in the Lawsuit, including but not limited to claims based on calls that are covered under the class definition set forth above ("Eligible Calls") or claims for violation of CIPA, including but not limited to Section 632 and Section 632.7, or any other federal, state, or local statute, regulation, or common law relating to the recording of telephone calls at any time prior to the Final Settlement Date (as defined in the Settlement Agreement). Unless otherwise requested by the Fifth Third/Vantiv Defendants, this release does not apply to or limit any action, whether pursued through the Lawsuit or any other claim or proceeding, by any Plaintiffs or Settlement Class Members against Ironwood, John Lewis, Dewitt Lovelace, IPS, Brian Bentley, Adam Bentley, or Andrew Bentley.

Ironwood filed for bankruptcy and, as a result, was dismissed from the Lawsuit without prejudice. To avoid the bankruptcy proceeding from potentially interfering with the prosecution of the Lawsuit, Plaintiffs also moved for the dismissal of Ironwood's officers, John Lewis and Dewitt Lovelace, without prejudice. The settlement allows the Fifth Third/Vantiv Defendants to elect to extend the release set forth above to Ironwood, John Lewis, and Dewitt Lovelace so long as that election is made before an order granting Final Approval of the settlement. Settlement Class Members who do not opt out of the Settlement will be bound by the release in the Final Approval Order, which may also include a release of claims against these parties if the Fifth Third/Vantiv Defendants elect to include them.

If the proposed settlement is not approved, the Lawsuit will proceed as if no settlement had been reached. There can be no assurance that if the settlement is not approved and the Lawsuit resumes that Settlement Class Members will recover more than what is provided for under the proposed settlement or will recover anything at all.

**XII. Who are the lawyers for Plaintiffs and class members?**

The following lawyers (“Settlement Class Counsel”) are serving as counsel for the Settlement Class:

Myron M. Cherry  
mcherry@cherry-law.com  
Jacie C. Zolna  
jzolna@cherry-law.com  
Benjamin R. Swetland  
bswetland@cherry-law.com  
Myron M. Cherry & Associates, LLC  
30 North LaSalle Street, Suite 2300  
Chicago, Illinois 60602  
(312) 372-2100 (telephone)  
(312) 853-0279 (facsimile)

From the beginning of the case to the present, Settlement Class Counsel has not received any payment for their services, nor have they been reimbursed for any out-of-pocket costs they have incurred, in prosecuting the Lawsuit against the Fifth Third/Vantiv Defendants or in obtaining this proposed settlement. Settlement Class Counsel will apply to the Court for an award of attorneys’ fees in the amount of no more than one-third (33.33%) of the Settlement Fund, after deducting incentive awards and settlement administration costs, as well as an additional amount for reimbursement of actual costs, which Settlement Class Counsel currently estimates will be between \$340,000-\$360,000. If the Court approves Settlement Class Counsel’s petition for fees and costs, it will be paid from the Settlement Fund. Settlement Class Members will not have to pay anything toward the fees or costs of Settlement Class Counsel. You do not need to hire your own lawyer because Settlement Class Counsel is working on your behalf and will seek final approval of the settlement on behalf of the Settlement Class Members. You may hire a lawyer to represent you in this case if you wish, but it will be at your own expense.

Settlement Class Counsel may also petition the Court for incentive awards in the amount of \$5,000 to each of the three Settlement Class representatives who helped the Settlement Class Counsel on behalf of the whole Settlement Class.

**XIII. Where can I get more information about the Lawsuit?**

This Notice provides only a summary of the Lawsuit. You can view the settlement agreement and obtain more information about the settlement at **CallSettlement.com**. In order to see the complete case file, including the settlement agreement and all other pleadings and papers filed in the Lawsuit, you may also examine the court file at the office of the Clerk of the Court in the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604.

**PLEASE DO NOT CONTACT THE COURT (INCLUDING  
THE CLERK OF THE COURT OR THE JUDGE) OR DEFENDANTS  
WITH QUESTIONS ABOUT THE SETTLEMENT OR THE LAWSUIT**

**PLEASE ADDRESS ANY FURTHER CONTACT TO THE SETTLEMENT ADMINISTRATOR  
AT:**

[insert name, address, phone number, and email address]

Dated: [INSERT DATE]

BY ORDER OF THE UNITED STATES DISTRICT COURT



# **Exhibit 2**

«Barcode»

[insert box for name/address change]

Claim#: «ClaimID»-«MailRec»

«First1» «Last1»

«CO»

«Addr2»

«Addr1»

«City», «St» «Zip»

«Country»

### CLAIM FORM

*Sat Narayan d/b/a Express Hauling, et al. v. Fifth Third Bank, et al.*

Case No. 1:16-cv-11223

United States District Court for the Northern District of Illinois, Eastern Division

**INSTRUCTIONS:** Please sign below and return this Claim Form in the enclosed, self-addressed pre-paid envelope or mail it to: [insert name and address of Settlement Administrator]

**In order to receive your settlement payment, you must submit your claim no later than [insert date] by mailing this claim form to the settlement administrator or by submitting a claim online at CallSettlement.com.**

Call records reflect that the person or business identified below received calls from an International Payment Services, LLC or Ironwood Financial, LLC affiliated call center at the following number(s) between May 8, 2014 and July 29, 2016:

[Name, phone number(s), and number of calls to be pre-populated by Settlement Administrator]

I affirm that I have the authority to submit this Claim Form on behalf of the person or business identified above, and that, to the best of my knowledge, I or my company meet the definition of the Settlement Class as set forth in the Notice.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

If you have any questions about this Claim Form, please call the Settlement Administrator toll-free at [insert phone number]. For additional information about the settlement, please visit **CallSettlement.com**.

**Mail this Claim Form or submit it online on or before [insert date] (postmark deadline).**

# **Ex. B**

**DECLARATION OF MYRON M. CHERRY**

I, Myron M. Chery, declare as follows:

1. I am the founder and managing partner of Myron M. Cherry & Associates, LLC (the “Firm”) and represent Plaintiffs in *Sat Narayan d/b/a Express Hauling, et al. v. Fifth Third Bank, et al.*, Case No. 1:16-cv-11223 pending in the United States District Court for the Northern District of Illinois (the “Lawsuit”). I have personal knowledge of the facts set forth in this declaration and, if called to testify, could and would testify competently thereto.

2. I and others in the Firm have wide experience in class actions as well as complex litigation. I have represented plaintiffs and defendants in a variety of substantive litigation including without limitation class actions, civil rights, contract, antitrust, fraud, securities actions, environmental issues, and tort cases. I have tried cases to verdict before courts and juries in this and other jurisdictions. A substantial part of my practice since approximately 1972 involves plaintiff contingency litigation, including class action litigation.

3. I graduated from Northwestern University Law School in 1962 and have been practicing law for over 50 years, engaging exclusively in practice as a litigation and trial lawyer. I was an editor of the Northwestern Law Review and was awarded Order of the Coif. I am a member of the Federal Trial Bar and admitted to practice and have appeared before various Courts of Appeal, as well as the Supreme Court of the United States.<sup>1</sup> I am also a member of the Bar in the states of Illinois, California, Wisconsin, and the District of Columbia.

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<sup>1</sup> I am admitted to practice in the following federal courts: U.S. Supreme Court, First Circuit Court of Appeals, Seventh Circuit Court of Appeals, Ninth Circuit Court of Appeals, District of Columbia Circuit Courts of Appeals, U.S. District Court for the Northern District of Illinois, U.S. District Court for the Central District of Illinois, U.S. District Court for the Eastern District of Wisconsin, U.S. District Court for the Central District of California, and U.S. District Court for the Southern District of California.

4. Over the years, our Firm has recovered hundreds of millions of dollars in verdicts and settlements for the classes, individuals, and entities whom we have represented.

5. The Firm also devotes a significant amount of time to public interest issues, including community affairs, political affairs, *pro bono* representation, and assisting indigent individuals—work for which one of the Firms’ partners, Jacie Zolna, was recognized on two occasions (in 2013 and again in 2017) with the United States District Court for the Northern District of Illinois’ Award for Excellence in *Pro Bono* Service.

6. Based on my decades of experience in complex and class action litigation, I believe the proposed settlement with the Fifth Third/Vantiv Defendants is more than fair, reasonable and adequate. The \$50 Million settlement fund will provide significant relief to the class and reasonably accounts for the risks and costs associated with continued litigation and the uncertainties of a trial and any appeals. Based on our Firm’s research, the largest settlement of a class action brought under the California Invasion of Privacy Act (“CIPA”) prior to this Lawsuit was \$18 Million for a class of approximately 600,000 members. *See Marengo v. Visa, Inc.*, C.D. Cal. Case No. 2:10-cv-08022. The fund created by this settlement, therefore, is not only substantial, but also unprecedented.

7. The settlement with the Fifth Third/Vantiv Defendants was the product of extensive arm’s length negotiations over the course of several months, including an unsuccessful mediation on February 26, 2021 before the Honorable Layn R. Phillips (ret.). Thereafter, and more recently, Plaintiffs and the Fifth Third/Vantiv Defendants engaged in numerous settlement discussions over several months to resolve the remaining claims against these defendants.

8. Plaintiffs’ counsel is familiar with the claims being settled and the defenses asserted and is aware of the risks of pursuing the litigation any further. Plaintiffs’ counsel has

conducted extensive investigation and discovery relating to the claims alleged. Nearly 750,000 documents have been produced in this litigation. In response to subpoenas issued to two non-parties, Veracity Networks, LLC and Integrated Reporting is Simple, LLC, call databases were also produced that included over 1,300,000 million call recordings to phone numbers with California area codes, all of which needed to be analyzed to determine class membership.

9. The parties have also issued and responded to a large number of written discovery requests, including interrogatories, document requests, and requests to admit. Plaintiffs, for example, have issued 1,093 written discovery requests in the litigation. Plaintiffs have also responded to 666 written discovery requests issued by the various defendants. Several depositions have also been taken, including of all the named Plaintiffs, three of Plaintiffs' experts, and ten employees of the Fifth Third/Vantiv Defendants. Plaintiffs further litigated numerous complex discovery disputes with the Fifth Third/Vantiv Defendants, including the dispute of over 15,000 privilege claims made by Vantiv, and culminating in a hearing on October 23, 2020, which resulted in the Court ordering Vantiv to produce witnesses to sit for depositions on document destruction and preservation.

10. Plaintiffs' counsel undertook exhaustive research of the legal issues involved, conducted detailed factual investigation, briefed a number of significant motions, and obtained several substantive rulings from the Court, including favorable decisions on various motions to dismiss, as well as motions for judgment on the pleadings. The parties also fully briefed, twice, Plaintiffs' motion for class certification. Plaintiffs have enlisted three experts, all of whom submitted reports and were deposed. If the litigation were to continue it is likely additional experts will be retained.

11. Plaintiffs' counsel also retained two separate bankruptcy law firms to assist with the Fifth Third/Vantiv Defendants' efforts in the Ironwood bankruptcy proceedings and its potential impact on this suit and consulted with other bankruptcy lawyers as well.

12. Based on billing records that are kept in the ordinary course of business at the Firm, the Firm has incurred \$417,182.54 in costs in connection with the Lawsuit as of February 8, 2022, of which \$83,191.45 was reimbursed as part of the settlement with the Wells Fargo Defendants. Thus, the total amount of unreimbursed costs incurred by the Firm in connection with the Lawsuit is \$333,991.09. This amount may not include costs that have not yet been accounted for or otherwise inputted into the Firm's billing software. Once additional costs incurred by the Firm during the months leading up to a final approval hearing are included, I estimate that total unreimbursed costs could range from approximately \$340,000 to \$360,000. We will present our actual final costs to the Court prior to the final approval hearing.

13. The Firm previously retained an independent class action administrator, KCC, LLC ("KCC"), to analyze call data, billing records, and lead lists to determine membership in the class during the time period relevant to the Fifth Third/Vantiv Defendants. Based on that analysis, KCC determined that there were approximately 313,215 potential class members who received approximately 1,153,324 recorded phone calls during the relevant time period.

14. The parties have agreed to retain KCC to administer the settlement. KCC has provided an estimate to our Firm of approximately \$498,919 - \$729,051 to administer the settlement with the Fifth Third/Vantiv Defendants.

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

Dated: March 12, 2022

/s/ Myron M. Cherry  
Myron M. Cherry