

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

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

**MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT WITH THE FIFTH THIRD/VANTIV DEFENDANTS***

Dated: July 7, 2022

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* Because the settlement with Wells Fargo Bank, N.A. and First Data Merchant Services, LLC (the “Wells Fargo Defendants”) has become final and those parties have been dismissed from the lawsuit, Plaintiffs have re-captioned the lawsuit to include only the remaining plaintiffs and defendants.

Plaintiffs 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") move for preliminary approval of their class-wide settlement with Defendants Fifth Third Bank ("Fifth Third"), Vantiv, Inc. n/k/a/ Worldpay, Inc. ("Vantiv"), and National Processing Company n/k/a Worldpay ISO, Inc. ("NPC") (collectively, the "Fifth Third/Vantiv Defendants"). In support of this motion, Plaintiffs state as follows:

I. INTRODUCTION

The \$50 Million settlement reached with the Fifth Third/Vantiv Defendants represents the largest settlement ever in a case brought under the California Invasion of Privacy Act ("CIPA") and nearly double the settlement previously reached with the Wells Fargo Defendants. As a result, class members are in line to receive substantial settlement payments. Indeed, the average settlement payment—even after payment of the requested attorneys' fees and costs, incentive awards, and administration costs—is approximately \$992.69 per class member, an amount greater than the \$774.19 average settlement payment provided in the settlement with the Wells Fargo Defendants. One class member, who received multiple calls, will receive a settlement payment of approximately \$28,673.72.

Not surprisingly, the reaction to the settlement amongst the class has been overwhelmingly positive. Of 307,954 class members, only 19—.006% of the class—elected to opt-out of the settlement. More significantly, *not a single class member objected* to the settlement or the requested attorneys' fees and incentive awards. The number of class members who actively participated in the settlement, on the other hand, was substantial: 32,682 valid claims were submitted that covered 136,907 Eligible Calls—a response rate that is significantly

higher than what is typically achieved in class action settlements. For these reasons, and those that follow, Plaintiffs respectfully request the Court to grant final approval to this settlement.

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 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.

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 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**.

III. SUMMARY OF SETTLEMENT TERMS

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. *See* Settlement Agreement at ¶ 1. Each class member who did not elect to be excluded is 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 needed to do was submit a claim form either by mail or online. *Id.* at ¶ 3. The claim form is simple, non-cumbersome, and included a pre-paid return envelope that could 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 ¶ 2.¹ “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 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). 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 had an opportunity to opt-out of the class and the settlement. *Id.* at ¶ 18. Class members who did not opt-out also had the opportunity to object to the proposed settlement and/or the attorneys’ fees and costs requested by Class Counsel. *Id.* at ¶ 19.

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

IV. SETTLEMENT ADMINISTRATION

Pursuant to the Settlement Agreement, the parties retained KCC, LLC (the “Settlement Administrator”) to administer the settlement. *See* Settlement Agreement at ¶ 4. The Settlement Administrator implemented the notice plan in accordance with the Settlement Agreement and the Court’s Preliminary Approval Order. *See* Supplemental Declaration of Lana Lucchesi (“Lucchesi Decl.”) at ¶¶ 9-13, attached as **Ex. B**. Notice was sent by direct mail to each class member’s last known address. *Id.* at ¶ 9. The Settlement Administrator also published a website that included a copy of the notice and other important documents and had the capability to accept claims online, established a toll-free settlement hotline, and caused to be delivered notice of this settlement through approximately 1,033,243 impressions on various websites targeting those who likely own, make decisions for, or work in small businesses in California. *Id.* at ¶¶ 11-13.²

The class includes approximately 307,954 potential members who received approximately 1,153,324 recorded phone calls during the period covered by the settlement with the Fifth Third/Vantiv Defendants. *Id.* at ¶ 8. 32,682 class members submitted a valid claim, which collectively cover 136,907 Eligible Calls. *Id.* at ¶ 15. Thus, class members are entitled to receive approximately \$236.97 per Eligible Call with an average settlement payment of \$992.69 per class member. *Id.* at ¶ 19.³ The highest settlement payment will be approximately \$28,673.72 to a single class member. *Id.*

² The Settlement Administrator also sent out all notices required under the Class Action Fairness Act (“CAFA”). *Id.* at ¶¶ 3-4. The Settlement Administrator received no objection or other response from any of the notified governmental entities. *Id.* at ¶ 5.

³ The amount each class member will receive, of course, will vary depending on how many Eligible Calls it received and final processing by the Settlement Administrator, but these estimates are illustrative of the approximate average per call recovery and average per class member recovery.

There were enough claims submitted during the initial claims period to exhaust the entire Settlement Fund and, therefore, no additional claims period is necessary under the Settlement Agreement. Only 19 class members elected to opt-out of the settlement, which represents .006% of the class. *See* Lucchesi Decl. at ¶ 20. Not a single class member objected to the settlement or the requested attorneys' fees and incentive awards. *Id.* at ¶ 21.

V. ARGUMENT

A. **The settlement is fair, reasonable, and adequate and should be approved.**

The settlement here is more than fair, reasonable, and adequate and should be granted final approval. “Federal courts naturally favor the settlement of class action litigation.” *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). A district court should approve a class action settlement “if it determines after a hearing that the proposed settlement is ‘fair, reasonable, and adequate.’” *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 958 (N.D. Ill. 2011) (quoting FED. R. CIV. P. 23(e)(3)). “[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 (7th Cir. 2014) (citing *Gautreaux v. Pierce*, 690 F.2d 616, 631 (7th 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). Because each of these factors favors

approval of the settlement reached here, the Court should find the settlement fair, reasonable, and adequate, and grant final approval.

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

The first, and most important, factor favors approval because the terms of the settlement are commensurate with the strength of Plaintiffs' claims. *See Wong*, 773 F.3d at 863-64 (“We have deemed the first factor to be the most important”). While Plaintiffs believe strongly in their case, 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 nonetheless uncertain for either side. *See Charvat v. Valente*, No. 12-CV-05746, 2019 WL 5576932, at *7 (N.D. Ill. Oct. 28, 2019) (“[A]bsent a settlement, each of the parties would face very real litigation risk at trial. [Plaintiff], for instance, may well have failed to prevail at trial, as his claims were predicated on the notion that the Cruise Defendants were vicariously liable for RMG's actions in sending the telemarketing calls. Should the Court or a jury have found that RMG was not acting as an agent for the Cruise Defendants, not a single member of the class would have received any payment.”).

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 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 plan in the Bankruptcy Case in which it would have swept the class claims here into bankruptcy where they would have been compromised at a fraction of the amount secured in the settlement before this Court.

In addition to their legal maneuvering 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 settlement, on the other hand, provides a substantial and certain recovery for the class that may not otherwise be obtained. As noted above, this settlement far exceeds the previous largest CIPA settlement of \$18 Million. *See* Declaration of Myron M. Cherry (“Cherry Decl.”) at ¶ 6, attached as **Ex. C**. 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*. See *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 495 (N.D. Ill. 2015) (“In light of the significant possibility that [plaintiff] would recover nothing for the class if he proceeded with litigation and the fact that the per-claimant recovery under this settlement is comparable to the per-claimant recoveries in other [comparable] cases, the Court finds that this factor weighs in favor of approval.”); *Charvat*, 2019 WL 5576932, at *6 (approving class action settlement, noting that “[w]hile the average consumer payout of \$22.17 is not anywhere the statutory maximum, it is also not out of line with other approved TCPA class action settlements.”).

Even after deducting the requested attorneys’ fees and costs, administration costs, and incentive awards, class members are in line to receive average settlement payments in the amount of \$992.69 each, an amount greater than the \$774.19 average settlement payment provided in the settlement with the Wells Fargo Defendants. “It must also be remembered that ‘a dollar today is worth a great deal more than a dollar ten years from now,’ and a major benefit of the settlement is that Class Members may obtain these benefits much more quickly than had the parties not settled.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 583 (N.D. Ill. 2011) (citations omitted). Moreover, “[t]he expected value of litigation must be discounted to account for the risk of failure.” *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 197 (N.D. Ill. 2018) (granting final approval to class action settlement, noting that “plaintiffs forfeit their chance at the full ... statutory damages award, but gain certainty, avoid litigation costs, and recover now

instead of years later”). In short, the settlement provides substantial and certain relief for hotly contested claims. The first factor, therefore, supports final approval of the settlement.

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 680 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. *See Schulte*, 805 F. Supp. 2d at 586 (“Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation.”); *Charvat*, 2019 WL 5576932, at *7 (“[I]t is reasonable to assume that summary judgment and pretrial issues would be hotly contested. As a result, any relief to class members would still be far down the road and may ultimately be entirely denied.”); *Leung*, 326 F.R.D. at 197 (finding second factor favors approval of class action settlement because “there would still be substantial motion practice on ... a possible summary judgment motion, plus trial and appeal. Both the class members and the defendant benefit from avoiding these expenses through a definite and immediate settlement.”).

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

There was virtually no opposition to the settlement amongst class members. Of the 307,594 class members, only 19 opted out. In other words, 99.994% of the class did not opt out

of the settlement. *See In re Mexico Money Transfer Litig. (W. Union & Valuta)*, 164 F. Supp. 2d 1002, 1021 (N.D. Ill. 2000), *aff'd sub nom. In re Mexico Money Transfer Litig.*, 267 F.3d 743 (7th Cir. 2001) (“99.9% of class members have neither opted out nor filed objections to the proposed settlements. This acceptance rate is strong circumstantial evidence in favor of the settlements.”).⁴ More significantly, there was *not a single objection* to the settlement or the requested attorneys’ fees, costs, and incentive awards.

The lack of any opposition to the settlement, therefore, favors final approval of the settlement. *See Isby*, 75 F.3d at 1200 (affirming approval of class action settlement of class action despite the fact that 13% of the class submitted written objections to the settlement); *see also Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, 07-cv-2898, 2012 WL 651727, *6 (N.D. Ill. Feb. 28, 2012) (holding that 3 objectors out of 1,300 class members “indicates that the class members consider the settlement to be in their best interest”).

In contrast to the non-existent opposition to the settlement, tens of thousands of class members affirmatively participated in the settlement by submitting a claim. *See Lucchesi Decl.* at ¶ 15 (stating that 32,682 class members—10.6% of the class—submitted a claim, which covered 136,907—or 11.87% of—Eligible Calls). This robust response rate is further evidence that the settlement was received favorably by class members, particularly considering that class “settlements regularly yield response rates of 10 percent or less.” *Sylvester v. CIGNA Corp.*, 369 F. Supp. 2d 34, 52 (D. Me. 2005).

The high claims rate coupled with the low number of opt-outs and no objections demonstrates that the notice program was successful, and the class believes the settlement is fair, reasonable, and adequate. Indeed, large class actions will inevitably draw objections and opt-outs

⁴ A list of all class members who elected to opt out is attached as Ex. E to the Lucchesi Decl.

and, for that reason, courts routinely recognize a positive class member reaction despite opposition similar to or greater than the 19 opt-outs and no objections here. *See In re: Sears, Roebuck & Co. Front-loading Washer Prod. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at *11 (N.D. Ill. Feb. 29, 2016) (“[O]f approximately 542,000 class members, only three objected to the settlement ... and only 59 chose to opt out.... The small number of class members who objected or opted out further supports the fairness and reasonableness of the settlement.”); *Schulte*, 805 F. Supp. 2d at 586 (“A very small percentage of affected parties have opposed the settlement. *** [O]nly 342 Class Members excluded themselves from the settlement and only 15 Class Members submitted documents that could be considered objections.”); *Mangone v. First USA Bank*, 206 F.R.D. 222, 227 (S.D. Ill. 2001) (approving class action settlement where of the 18.5 million class members there were 19,637 opt-outs and 97 objections, finding “such overwhelming support by class members is strong circumstantial evidence supporting the fairness of the Settlement.”). The lack of opposition and favorable reaction of class members to the settlement weigh in favor of granting final approval.

4. The opinion of competent counsel.

In connection with this factor, Plaintiffs submit the Declaration of Myron M. Cherry, a lawyer with over 50 years of experience in complex and class action litigation. *See Cherry Decl.* at ¶¶ 1-5. Based on his extensive experience, Mr. Cherry opines that the settlement is fair, reasonable, and adequate and provides a significant benefit to the class. *Id.* at ¶¶ 6-7; *see also Schulte*, 805 F. Supp. 2d at 586-87 (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); *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

counsel's opinions regarding the fairness of a settlement, when it is negotiated by experienced counsel.”). The opinion of Class Counsel provides additional support to the final approval of the settlement.

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

The last factor clearly weighs in favor of final approval. The case settled only after the parties engaged in substantial discovery and litigated and obtained rulings from the Court on several substantive and potentially dispositive issues in the case. *See* Cherry Decl., ¶¶ 9-11. 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, “the advanced stage of the proceedings weighs heavily in favor of approving the settlement.” *Hispanics United of DuPage Cty. v. Vill. of Addison, Ill.*, 988 F. Supp. 1130, 1170-71 (N.D. Ill. 1997); *see also Am. Int’l Grp.*, 2012 WL 651727, *8 (approving settlement that was reached “after over three years of vigorous litigation [and] substantial discovery had been completed”).

B. *The proposed form and method of class notice satisfied Rule 23 and 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 provided direct notice of the settlement 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 provided 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 was created that included a copy of the notice, the lawsuit, and other relevant information, as well the capability to accept claims online. Notice of the settlement was also published via the internet, which included approximately 1,033,243 impressions on various websites targeted in California. A toll-free settlement hotline was also established to answer frequently asked questions.

The notice plan implemented here was the best notice practicable and afforded class members with all due process protections required by Rule 23. *See Schulte*, 805 F. Supp. 2d at 591 (“The parties’ use of a settlement website and toll free number suggests that the claims process was designed to encourage—not discourage—the filing of claims.”); *In re: Sears, Roebuck*, 2016 WL 772785, *5 (“[D]efendants’ databases allowed the Claims Administrator to stream-line the claims submission process. Whenever possible, class members were sent postcard notices that contained a specific, individualized code; when the class member entered

this code in the online claim form, many fields ‘auto-populated,’ making claim submission easier.”).

WHEREFORE, Plaintiffs’ request the Court to grant final approval of the class action settlement with the Fifth Third/Vantiv Defendants. A proposed Final Approval Order, approved by Plaintiffs and the Fifth Third/Vantiv Defendants, will be submitted to chambers.

Dated: July 7, 2022

Respectfully submitted,

By: /s/ Jacie C. Zolna
One of Plaintiffs’ Attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the foregoing **Motion for Final Approval of Class Action Settlement With the Fifth Third/Vantiv Defendants** upon:

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via the electronic filing system, on the 7th day of July, 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]

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 (31st) 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 4th, 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

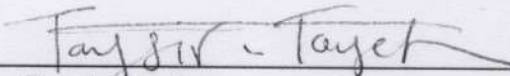
Dated: March ____, 2022

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

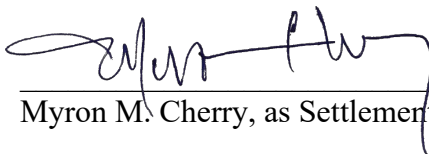
Dated: March ____, 2022

TAYSIR TAYEH d/b/a CHIEF'S MARKET

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

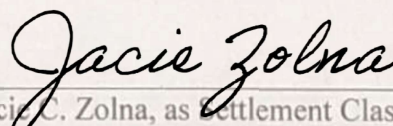
TAYSIR TAYEH d/b/a CHIEF'S MARKET

By: Taysir Tayeh
Title: _____
Individually and in a representative capacity

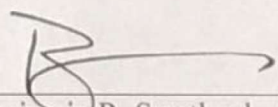
Dated: March 3, 2022

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

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, 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

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

SAT NARAYAN d/b/a EXPRESS
HAULING, *et al.*,

Plaintiffs,

vs.

FIFTH THIRD BANK, *et al.*,

Defendants.

Case No. 1:16-cv-11223

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
LANA LUCCHESI RE: NOTICE
PROCEDURES AND CLAIMS
ADMINISTRATION**

1 I, Lana Lucchesi, declare and state as follows:

2
3 1. I am a Vice President with KCC Class Action Services, LLC (“KCC”), located in
4 San Rafael, California. Pursuant to the Order Granting Preliminary Approval of Class Action
5 Settlement (the “Preliminary Approval Order”) dated March 15, 2022, the Court appointed KCC
6 as the Claims Administrator in connection with the proposed Settlement of the above-captioned
7 Action.¹ I have personal knowledge of the matters stated herein and, if called upon, could and
8 would testify thereto.

9 2. The purpose of this declaration is to provide updated information and statistics
10 based on my last declaration executed on May 2, 2022.

11 **CAFA NOTIFICATION**

12 3. In compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. Section
13 1715, KCC compiled a CD-ROM containing the following documents: Class Action Complaint,
14 Amended Class Action Complaint, Second Amended Class Action Complaint, Response to Second
15 Amended Class Action Complaint, Amended Response to Second Amended Class Action
16 Complaint, Motion for Preliminary Approval, Preliminary Approval Order, Long-Form Notice,
17 Claim Form, Settlement Agreement, Order Denying Defendants' Motion to Dismiss, and the Order
18 Denying Motion for Judgment on Pleadings, which accompanied a cover letter (collectively, the
19 “CAFA Notice Packet”). A copy of the cover letter is attached hereto as Exhibit A.

20 4. On March 21, 2022, KCC caused sixty-one (61) CAFA Notice Packets to be mailed
21 via Priority Mail from the U.S. Post Office in Memphis, Tennessee to the parties listed on Exhibit
22 B, i.e., the U.S. Attorney General, the Commissioners of Banking and Finance Institutions, the
23 Attorneys General of the 5 recognized U.S. Territories, and the Office of the Comptroller of the
24 United States, as well as parties of interest to this Action.

25 5. As of the date of this Declaration, KCC has received no response to the CAFA
26 Notice Packet from any of the recipients identified in paragraph 4 above.

27
28 ¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement, dated March 11, 2022 and₂or the Preliminary Approval Order.

1 **CLASS LIST**

2
3 6. On or around November 30, 2021 through December 8, 2021, KCC received from
4 Class Counsel several data files and PDF documents representing billing records, call databases,
5 and daily lead lists. Phone numbers were obtained from the billing records and call databases. These
6 phone numbers were compared to the daily lead lists which contained names and addresses. For
7 records where a name and address could not be determined, KCC facilitated a reverse phone look-
8 up search.

9 7. KCC formatted the list for mailing purposes, removed duplicate records, and
10 processed the names and addresses through the National Change of Address Database (“NCOA”)
11 to update any addresses on file with the United States Postal Service (“USPS”). A total of 20,036
12 addresses were found and updated via NCOA. KCC updated its proprietary database with the Class
13 List.

14 8. Through the process described above, KCC identified 307,954 Class Members
15 (313,215 total unique phone numbers) associated with 1,153,324 total calls received during the
16 period covered by the settlement with the Fifth Third Bank Defendants (i.e., from May 8, 2014 and
17 July 29, 2016).

18 **MAILING OF THE NOTICE PACKET**

19 9. On April 4, 2022, KCC caused the Notice and Claim Form (collectively, the “Notice
20 Packet”) to be printed and mailed to the 307,954 names and mailing addresses in the Class List. A
21 true and correct copy of the Notice Packet is attached hereto as Exhibit C.

22 10. Since mailing the Notice Packets to the Class Members, KCC has received 12,138
23 Notice Packets returned by the USPS with undeliverable addresses. Through credit bureau and/or
24 other public source databases, KCC performed address searches for some of these undeliverable
25 Notice Packets and was able to find updated addresses for 119 Class Members. KCC promptly re-
26 mailed Notice Packets to the 119 found new addresses.

27 **PUBLICATION OF THE SUMMARY NOTICE**

28 11. KCC purchased approximately 1,000,000 impressions to be distributed

1 programmatically on various websites from April 4, 2022 through May 4, 2022. The impressions
2 were behaviorally targeted to adults 18 years of age and older in California who likely own, make
3 decisions for, or work in small businesses, as well as contextually targeted to content and keywords
4 related to small businesses. A total of 1,033,243 impressions were delivered, resulting in an
5 additional 33,243 impressions at no extra charge. Confirmation of the digital notices as they
6 appeared on a variety of websites is attached hereto as Exhibit D.

7 **SETTLEMENT WEBSITE**

8
9 12. On or around April 1, 2022, KCC established a website [www.CallSettlement.com]
10 dedicated to this matter to provide information to the Class Members and to answer frequently
11 asked questions. The website URL was set forth in the Notice and Claim Form. Visitors of the
12 website can download copies of the Notice, Claim Form, and other case-related documents.
13 Visitors can also submit claims online. As of July 5, 2022, the website has received 13,083 visits.

14 **TELEPHONE HOTLINE**

15 13. KCC established and continues to maintain a toll-free telephone number (1-855-
16 905-1494) for potential Class Members to call and obtain information about the Settlement, and/or
17 request a Notice. The telephone hotline became operational on April 1, 2022, and is accessible 24
18 hours a day, 7 days a week. As of July 5, 2022, KCC has received a total of 1,019 calls to the
19 telephone hotline.

20 **CLAIM FORMS**

21 14. The postmark deadline for Class Members to file claims in this matter was May 30,
22 2022. As of July 5, 2022, KCC has received a total of 32,970 timely-filed claim forms representing
23 138,389 eligible calls and 191 untimely-filed claim forms representing 824 eligible calls.

- 24 15. Of the 32,970 timely-filed claim forms:
- 25 • 32,682 are complete and valid covering 136,907 Eligible Calls;
 - 26 • 236 are duplicate of other claims and are therefore invalid; and
 - 27 • 52 have been identified as deficient for lack of signature.
- 28

1 16. KCC will be sending deficiency letters to the 52 claims identified as deficient for
2 lack of signature in order to give them a chance to cure.

3 17. In addition, settlement payments that are equal to or greater than \$600 are required
4 to be reportable on Form 1099-MISC. As a result, KCC will need to obtain valid taxpayer IDs from
5 the eligible Class Members who are anticipated to receive \$600 or more. KCC will undertake this
6 process in the same manner it did in the settlement with the Wells Fargo Defendants.

7
8 **PRELIMINARY SETTLEMENT AWARD CALCULATIONS**

9 18. KCC has preliminarily calculated the Class Member settlement awards. These
10 calculations are based on the assumptions that the gross settlement amount is \$50,000,000.00, and
11 from that amount, deductions are made for: (a) attorneys' fees (\$16,397,935.90); (b) attorneys'
12 costs (\$352,616.23); (c) named plaintiff incentive awards (\$15,000.00); and (d) administration
13 costs (\$791,192.44). The remaining amount (\$32,443,255.43 (the "Net Settlement Fund") will be
14 allocated pursuant to the terms of the settlement to those Class Members preliminarily approved
15 for payment.

16 19. Based on these preliminary figures, the estimated average settlement payment per
17 Class Member is approximately \$992.69. The total estimated share per Eligible Call is
18 approximately \$236.97. An estimated 10,112 Class Members are eligible to receive a settlement
19 payment in the amount equal to or greater than \$1,000 (i.e., they received 5 or more Eligible Calls).
20 The highest amount a Class Member is estimated to receive is approximately \$28,673.72 (121
21 Eligible Calls). These figures are preliminary and subject to change based on further investigation
22 and claims processing and subject to the Court's final approval order.

23 **REPORT ON EXCLUSION REQUESTS RECEIVED TO DATE**

24 20. The Notice informs Class Members that requests for exclusion from the Class must
25 be postmarked no later than May 23, 2022. As of the date of this declaration, KCC has received
26 19 requests for exclusion. A list of the Class Members who timely requested to be excluded is
27 attached hereto as Exhibit E.

28 **OBJECTIONS TO THE SETTLEMENT**

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21. The deadline for Class Members to object to the settlement is May 23, 2022. As of the date of this declaration, KCC has not received any objections to the settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 6, 2022 at San Rafael, California



Lana Lucchesi

Exhibit A



1 McInnis Parkway
Suite 250
San Rafael, CA 94903

March 21, 2022

VIA PRIORITY MAIL

«First» «Last»
«Company»
«Address_1»
«Address_2»
«City», «State» «Zip»

Re: Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

Dear «First» «Last»:

KCC Class Action Services, LLC is the independent third-party Administrator in a putative class action lawsuit entitled *Sat Narayan d/b/a Express Hauling et al. v. Fifth Third Bank, N.A. et al.*, Case No. 16 cv 11223. Baker & Hostetler LLP represents Fifth Third Bank, National Association, Vantiv, Inc. and Worldpay, Inc., n/k/a Worldpay LLC, and National Processing Company n/k/a Worldpay ISO, Inc. (“Defendants”) in that Action. The lawsuit is pending before the Honorable Rebecca R. Pallmeyer in the United States District Court for the Northern District of Illinois. This letter is to advise you that Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement in connection with this class action lawsuit on March 12, 2022.

Case Name: *Sat Narayan d/b/a Express Hauling et al. v Fifth Third Bank, N.A. et al.*¹
Case Number: 16 cv 11223
Jurisdiction: United States District Court,
Northern District of Illinois
**Date Settlement
Filed with Court:** March 12, 2022

Defendants deny any wrongdoing or liability whatsoever, but have decided to settle this Action to eliminate the burden, expense, and uncertainties of further litigation. In compliance with 28 U.S.C. § 1715(b), the following documents referenced below are included on the CD that is enclosed with this letter:

1. **28 U.S.C. § 1715(b)(1) – Complaint and Related Materials:** Copies of the *Class Action Complaint, Amended Class Action Complaint, Second Amended Class Action Complaint, Response to Second Amended Class Action Complaint*, and the *Amended Response to Second Amended Class Action Complaint* are included on the enclosed CD.
2. **28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** A final fairness hearing in this matter has been scheduled for August 4, 2022. Plaintiffs filed *Motion for Preliminary Approval* requesting that the Honorable Rebecca R. Pallmeyer preliminarily approve the proposed Settlement.

¹ In an effort to avoid confusion upon review of the enclosed documents, the Action was initially captioned *Wang v. Wells Fargo Bank N.A., et al.* Plaintiffs then amended their complaint which modified the caption to *CS Wang & Associate, et al. v. Wells Fargo Bank. N.A., et al.* The caption was again modified upon the dismissal of other parties resulting from a settlement of those parties’ claims. That settlement did not involve Defendants.



«First» «Last»

«First» «Last»

Page 2

Copies of the *Motion for Preliminary Approval* and the *Preliminary Approval Order* are included on the enclosed CD.

3. **28 U.S.C. § 1715(b)(3) – Notification to Class Members:** Copies of the *Long-Form Notice and Claim Form* to be provided to the class are included on the enclosed CD.
4. **28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** A copy of the *Settlement Agreement* is included on the enclosed CD.
5. **28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreement:** As of March 21, 2022, no other settlement or agreement has been entered into by the Parties to this Action with each other, either directly or by and through their respective counsel.
6. **28 U.S.C. § 1715(b)(6) – Final Judgment:** No Final Judgment has been reached as of March 21, 2022, nor have any Notices of Dismissal been granted at this time.
7. **28 U.S.C. § 1715(b)(7)(A)-(B) – Names of Class Members/Estimate of Class Members:** While KCC Class Action Services, LLC is in the process of gathering information on this issue, pursuant to 28 U.S.C. § 1715(b)(7)(A), at this time a complete list of names of class members as well as each current State of residence is not available because the parties do not presently know the names or current addresses of all the proposed settlement class members and will not learn this information until after this notice is required to be sent in accordance with the CAFA statute. Given the nature of the Action, Defendants anticipate that most of the class members are residents of California. Pursuant to 28 U.S.C. § 1715(b)(7)(B), it is estimated that there are approximately 313,215 class members.
8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** Copies of the *Order Denying Defendants' Motion to Dismiss* and the *Order Denying Motion for Judgment on Pleadings* are included on the enclosed CD.

If for any reason you believe the enclosed information does not fully comply with 28 U.S.C. § 1715, please contact the undersigned immediately at either fred.webb@computershare.com or (502) 830-6761 so that Defendants can address any concerns or questions you may have.

Thank you.

Sincerely,

/s/

Fred Webb

Case Coordinator

Enclosure – CD Rom

Exhibit B

Last	First	Company	Address 1	Address 2	City	State	Zip
Garland	Merrick	Attorney General of the United States	United States Department of Justice	350 Pennsylvania Avenue, NW	Washington	DC	20530-0001
Taylor	Troy	Office of the Alaska Attorney General	1031 W. 4th Avenue, Suite 200		Anchorage	AK	99501-1894
Marshall	Steve	Office of the Alabama Attorney General	501 Washington Avenue	PO Box 300152	Montgomery	AL	36130-0152
Rutledge	Leslie	Arkansas Attorney General Office	323 Center Street, Suite 200		Little Rock	AR	72201-2610
Bmovich	Mark	Office of the Arizona Attorney General	2035 N. Central Avenue		Phoenix	AZ	85004
CAFA Coordinator		Office of the Attorney General	Consumer Law Section	455 Golden Gate Ave., Suite 11000	San Francisco	CA	94102
Weiser	Phil	Office of the Colorado Attorney General	Ralph L. Carr Colorado Judicial Center	1300 Broadway, 10th Floor	Denver	CO	80203
Tong	William	State of Connecticut Attorney General's Office	185 Capitol Avenue		Hartford	CT	06106
Racine	Karl A.	District of Columbia Attorney General	400 5th St. NW		Washington	DC	20001
Jennings	Kathy	Delaware Attorney General	Carvel State Office Building	820 N. French Street	Wilmington	DE	19801
Moody	Ashley	Office of the Attorney General of Florida	The Capitol, PL-01		Tallahassee	FL	32399-1050
Carr	Chris	Office of the Georgia Attorney General	40 Capitol Square, SW		Atlanta	GA	30334-1300
Shikada	Holly T.	Office of the Hawaii Attorney General	425 Queen Street		Honolulu	HI	96813
Miller	Tom	Iowa Attorney General	Hoover State Office Building	1305 E. Walnut Street	Des Moines	IA	50319
Wadsen	Lawrence	State of Idaho Attorney General's Office	700 W. Jefferson Street, Suite 210	P.O. Box 83720	Boise	ID	83720-1000
Rasoul	Enid	Illinois Attorney General	James R. Thompson Center	100 W. Randolph Street	Chicago	IL	60601
Rokita	Todd	Indiana Attorney General's Office	302 West Washington Street, 5th Floor		Indianapolis	IN	46204
Schmidt	Derek	Kansas Attorney General	120 S.W. 10th Ave., 2nd Floor		Topeka	KS	66612-1597
Cameron	Daniel	Office of the Kentucky Attorney General	700 Capitol Ave	Capitol Building, Suite 118	Frankfort	KY	40601
Landry	Jeff	Office of the Louisiana Attorney General	P.O. Box 94095		Baton Rouge	LA	70804-0095
Healey	Maura	Office of the Attorney General of Massachusetts	1 Ashburton Place	20th Floor	Boston	MA	02108-1698
Frosh	Brian	Office of the Maryland Attorney General	200 St. Paul Place		Baltimore	MD	21202-2202
Frey	Aaron	Office of the Maine Attorney General	State House Station 6		Augusta	ME	04333
Nessel	Dana	Office of the Michigan Attorney General	P.O. Box 30212	525 W. Ottawa Street	Lansing	MI	48909-0212
Keith Ellison	Attorney General	Attention: CAFA Coordinator	445 Minnesota Street	Suite 1400	St. Paul	MN	55101-2131
Schmitt	Eric	Missouri Attorney General's Office	Supreme Court Building	207 W. High Street	Jefferson City	MO	65101
Lynch	Lynn	Mississippi Attorney General's Office	Department of Justice	P.O. Box 220	Jackson	MS	39205
Kruidsen	Austin	Office of the Montana Attorney General	Justice Bldg.	215 N. Sanders Street	Helena	MT	59620-1401
Stein	Josh	Office of the North Carolina Attorney General	Department of Justice	P.O. Box 629	Raleigh	NC	27602-0629
Peterson	Doug	Office of the Nebraska Attorney General	2115 State Capitol	P.O. Box 99320	Lincoln	NE	68509-8920
Ford	Aaron	Nevada Attorney General	Old Supreme Ct. Bldg.	100 North Carson St.	Carson City	NV	89701
Formella	John	New Hampshire Attorney General	Hew Hampshire Department of Justice	33 Capitol St.	Concord	NH	03301-6397
Patkin	Matthew J.	Office of the New Jersey Attorney General	Richard J. Hughes Justice Complex	25 Market St., P.O. Box 080	Trenton	NJ	08625-0080
Baldreas	Rector	Office of the New Mexico Attorney General	P.O. Drawer 1508		Santa Fe	NM	87504-1508
James	Letitia	Office of the New York Attorney General	Dept. of Law - The Capitol	2nd Floor	Albany	NY	12244-0341
Wrigley	Drew H.	North Dakota Office of the Attorney General	State Capitol	600 E. Boulevard Ave., Dept. 125	Bismarck	ND	58505-0040
Yast	Dave	Ohio Attorney General	Rhodes State Office Tower	30 E. Broad St., 14th Fl.	Columbus	OH	43215
O'Connor	John	Oklahoma Office of the Attorney General	313 NE 21st St.		Oklahoma City	OK	73105
Rosenblum	Ellen F.	Office of the Oregon Attorney General	Justice Building	1162 Court St., NE	Salem	OR	97301-4096
Shapiro	Josh	Pennsylvania Office of the Attorney General	16th Fl., Strawberry Square		Harrisburg	PA	17120
Narozha	Peter	Rhode Island Office of the Attorney General	150 South Main St.		Providence	RI	02903
Wilson	Alan	South Carolina Attorney General	Rembert C. Dennis Office Bldg.	P.O. Box 11549	Columbia	SC	29211
Reynolds	Jason	South Dakota Office of the Attorney General	1302 East Highway 14, Suite 1		Pierre	SD	57501-8501
Slatery, III	Herbert H.	Tennessee Attorney General and Reporter	P.O. Box 20207		Nashville	TN	37202-0207
Paxton	Ken	Attorney General of Texas	Capitol Station	P.O. Box 12548	Austin	TX	78711-2548
Reyes	Sean	Utah Office of the Attorney General	P.O. Box 142320		Salt Lake City	UT	84114-2320
Donovan	T.J.	Office of the Attorney General of Vermont	109 State St.		Montpelier	VT	05609-1001
Miyares	Jason	Office of the Virginia Attorney General	202 North Ninth St.		Richmond	VA	23219
Ferguson	Bob	Washington State Office of the Attorney General	1125 Washington St. SE	P.O. Box 40100	Olympia	WA	98504-0100
Morrissey	Patrick	West Virginia Attorney General	State Capitol Complex, Bldg. 1, Rm. E-26	1900 Kanawha Blvd. E.	Charleston	WV	25305
Kaul	Josh	Office of the Wisconsin Attorney General	Dept. of Justice, State Capitol	Rm. 114 East, P.O. Box 7857	Madison	WI	53707-7857
Hill	Bridget	Office of the Wyoming Attorney General	109 State Capitol		Cheyenne	WY	82002
Ala'ilima-Liua	Fainu/Uelei Falefatu	American Samoa Gov't	Dept. of Legal Affairs, c/o Office of Attorney General	P.O. Box 7	Utulei	AS	96799
Camacho	Lawren T.	Office of the Attorney General, TTC Building	590 S. Marine Corps Dr.	Suite 901	Tamuning	Guam	96913
Manibusan	Edward	Northern Mariana Islands Attorney General	Administration Building	P.O. Box 10007	Saipan	MP	96950-8907
Hernandez	Domingo Eimanueli	Puerto Rico Attorney General	Torre Chardon, Suite 1201	350 Carlos Chardon Ave.	San Juan	PR	00918
George	Denise N.	Virgin Islands Attorney General, Department of Justice	3438 Kronprindsens Gade	GERs Complex, 2nd Floor	St. Thomas	VI	00802
Froesh	Gwen	Financial Institution Examiner	Office of the Comptroller of the Currency, OCC Headquarters	Constitution Center, 400 7th Street, S.W.	Washington	DC	20219
Taylor	Gregory	Litigation Division, Director	Office of the Comptroller of the Currency, OCC Headquarters	Constitution Center, 400 7th Street, S.W.	Washington	DC	20219
		Baker & Hostetler LLP	200 South Orange Avenue	Suite 2300	Orlando	FL	32801
Greenfield	Dana	Office of the Comptroller of the Currency	8375 Dix Ellis Trail	Suite 403	Jacksonville	FL	32256-8273

Exhibit C

Sat Narayan, et al. v. Fifth Third Bank, et al. Settlement Administrator
 P.O. Box 43541
 Providence, RI 02940-3541



FFN

«3of9 barcode»
 «BARCODE»

Postal Service: Please do not mark barcode

FFN «Claim Number»

<<COMPANY1>>

«Address3»

«ADDRESS LINE 1» «ADDRESS LINE 2»

«CITY», «STATE»«PROVINCE» «POSTALCODE» «COUNTRY»

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

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

Case No. 1:16-cv-11223

**Must Be Postmarked
 No Later Than
 May 30, 2022**

Claim ID: <<Claim Number>>

PIN Code: <<PIN>>

Claim Form

CHANGE OF ADDRESS (ONLY IF DIFFERENT FROM ABOVE)

Primary Address

Primary Address, Continued

City

State

ZIP Code

Foreign Province

Foreign Postal Code

Foreign Country Name/Abbreviation

INSTRUCTIONS: Please sign below and return this Claim Form in the enclosed, self-addressed pre-paid envelope or mail it to: Sat Narayan, et al. v. Fifth Third Bank, et al. Settlement Administrator, P.O. Box 43541, Providence, RI 02940-3541.

In order to receive your settlement payment, you must submit your claim no later than May 30, 2022 by mailing this Claim Form to the Settlement Administrator or by submitting a claim online at www.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 of Business: <<COMPANY1>>

Phone Number That Received Calls	Number of Calls
<PhoneNumber1>	<NumberOfCalls1>
<PhoneNumber2>	<NumberOfCalls2>
<PhoneNumber3>	<NumberOfCalls3>
<PhoneNumber4>	<NumberOfCalls4>
<PhoneNumber5>	<NumberOfCalls5>

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 (mm/dd/yyyy): _____

Signature: _____

If you have any questions about this Claim Form, please call the Settlement Administrator toll-free at 1-855-905-1494. For additional information about the settlement, please visit www.CallSettlement.com.

Mail this Claim Form or submit it online on or before May 30, 2022 (postmark deadline).



FOR CLAIMS PROCESSING ONLY	OB <input type="checkbox"/>	CB <input type="checkbox"/>	<input type="radio"/> DOC <input type="radio"/> LC <input type="radio"/> REV	<input type="radio"/> RED <input type="radio"/> A <input type="radio"/> B
----------------------------------	-----------------------------	-----------------------------	--	---

Regardless of whether you mail the Claim Form or submit a claim online, **you must do so by the DUE DATE of May 30, 2022** to be eligible to receive a payment. Settlement payments will be issued only 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 W-9 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 March 15, 2022, 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 August 4, 2022 at 9:30 a.m. before the Honorable Rebecca R. Pallmeyer in Courtroom 2541 of the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL 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: www.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 your 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 Settlement 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 May 23, 2022** and sent to the following address: *Sat Narayan, et al. v. Fifth Third Bank, et al.* Settlement Administrator, P.O. Box 43541, Providence, RI 02940-3541.

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 May 23, 2022**. The address for the Clerk of the Court is: Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL 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, IL 60602

Counsel for the Fifth Third/Vantiv Defendants:

John Touhy
Baker & Hostetler LLP
One North Wacker Drive, Suite 4500
Chicago, IL 60606
Paul Karlsgodt
pkarlsgodt@bakerlaw.com
Baker & Hostetler LLP
1801 California Street, Suite 4400
Denver, CO 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, IL 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 **www.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, IL 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:

Sat Narayan, et al. v. Fifth Third Bank, et al. Settlement Administrator
P.O. Box 43541
Providence, RI 02940-3541
1-855-905-1494
admin@CallSettlement.com

Dated: April 4, 2022

BY ORDER OF THE UNITED STATES DISTRICT COURT



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UNITED STATES

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SAT NARAYAN ET AL V FIFTH THIRD BANK ET AL
SETTLEMENT ADMINISTRATOR
PO BOX 43541
PROVIDENCE RI 02940-9419

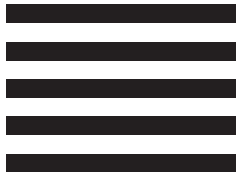


Exhibit D

*Sat Narayan, et al. v. Fifth Third
Bank, et al.*

Digital Media Screenshots



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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.

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Dodgers are World Series favorites again but know 'on paper' means little

The Dodgers won 106 games last season but fell short in a bid to defend their World Series title. They've added Freddie Freeman to try to deliver on expectations.



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Dodgers are World Series favorites again but know 'on paper' means little

The Dodgers won 106 games last season but fell short in a bid to defend their World Series title. They've added Freddie Freeman to try to deliver on expectations.



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#4	 Jersey Mike's Subs	\$145K - \$786K
#5	 Culver's	\$2.3M - \$5.8M

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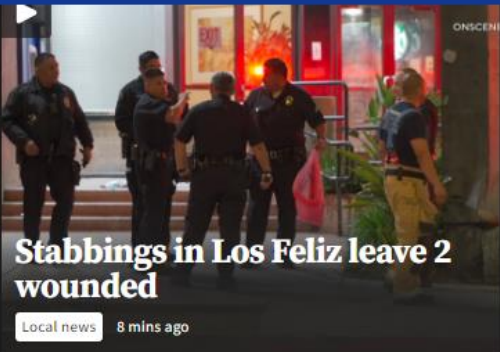
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19h ago |



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20h ago |



Nevada County police blotter: Caller reports man starting warming fire

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All is 'fair': Nevada City Psychic Fair celebrates 32 years



April 5 update: Nevada County COVID-19 cases rise by 3

19h ago



Alan Riquelmy: Paperchase

24h ago |

Brett McFadden to step down as Nevada Joint Union superintendent, accepts job in Monterey County

1d ago |



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April 5 update: Nevada County COVID-19 cases rise by 3

19h ago

The screenshot shows the top navigation bar of the YourCentralValley.com website with categories: News, Weather, Sports, Community, Education, and Contests. The main content area features three article thumbnails:

- Liberty junior Sierra Gonzalez is a swimmer without ...** (Local Sports, 16 hours ago)
- 2021 first-round draft pick Benny Montgomery excited ...** (Local Sports, 16 hours ago)
- Haener was upfront with teammates after flirting ...** (Sports, 1 day ago)
- Grizzlies Roster will feature two players with Valley ...** (Sports, 2 days ago)

A button labeled "View All Local Sports" is located below the thumbnails.

At the bottom, there is a dark banner with white text: "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." To the right of this text is a green button with a play icon and the text "CLICK HERE FOR MORE INFORMATION OR TO SUBMIT A CLAIM" and "CallSettlement.com".

Exhibit E



FFN:Sat Narayan et al v. Fifth Third Bank et al

Claim number	Name	Total Call Count
GC-465-529	LESTER W GROVER	1
DK-737-742	CAMPUS AUTO CARE	3
DO-767-480	POSTAL ANNEX	4
HH-733-423	PRESTIGE CARPET & TILE CLNNG	1
TM-996-866	BLAIR AQUATICS SWIM SCHOOL	3
KR-792-388	CAPTIONS INC	1
TG-458-578	EXCELLENT PAINTING	3
VI-916-401	ABLECOM TELEPHONE	3
WK-964-411	BARNES HYPNOTHERAPY	4
DN-510-847	DOORS ON DEMAND	4
NR-802-981	PERSONAL FINANCIAL SVC	1
RN-144-560	AAA MOBILE BLINDS	1
SD-512-256	LINKS AT SUMMERLY	2
SI-915-262	BAUMANN ENGINEERING	1
QX-551-541	NIVELCO USA LLC	3
NV-607-258	ROYAL VILLAGE ART STUDIO	1
DR-477-572	VALERIO FAMILY CHILD CARE	2
YE-465-673	JIMMIE D FOSTER GRADING INC	3
OS-330-512	INTERIORS BY O'DONNELL	2

Ex. C

DECLARATION OF MYRON M. CHERRY

I, Myron M. Cherry, 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.¹ I am also a member of the Bar in the states of Illinois, California, Wisconsin, and the District of Columbia.

¹ 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. A summary of representative cases is attached hereto as **Ex. 1**.

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 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. Plaintiffs’ counsel also structured the settlement to prevent any reversion of the settlement fund to the Fifth Third/Vantiv Defendants and to maximize distribution to the class. Among other things, the settlement calls for a robust notice program and simplified claims process. Notice was sent by direct mail, internet ads targeted to California small businesses, a website, and toll-free hotline. The claims process was simple and class members were only required to sign and return a short claim form in a self-addressed, pre-paid envelope that was

included with the notice. Claims could also be submitted online through the settlement website. The settlement also provides for an additional claims period if the initial claims rate is insufficient to exhaust the entire fund, although as of the date of this declaration enough claims were submitted during the initial period to exhaust the fund. If class members fail to cash their settlement check the settlement provides for the automatic reissuance of those checks and an additional period for class members to request reissuance of their settlement check if it still has not been cashed. Under no circumstances will any of the settlement fund revert to the Fifth Third/Vantiv Defendants. Based on my experience in prosecuting and settling class action lawsuits, it is my opinion that these additional features of the settlement provide a significant benefit to the class in that they will increase the claims rate and ensure class members who submit a claim receive their settlement payment. These additional provisions provide further evidence that the settlement is fair, reasonable, and adequate.

8. 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.). Plaintiffs and the Fifth Third/Vantiv Defendants thereafter engaged in numerous settlement discussions over several months prior to reaching the current settlement with these defendants.

9. 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.

10. 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.

11. 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. 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.

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

Dated: July 7, 2022

/s/ Myron M. Cherry
Myron M. Cherry

Ex. 1

NOTABLE RESOLVED AND PENDING CASES OF THE
ATTORNEYS OF MYRON M. CHERRY & ASSOCIATES, LLC

GENERAL CLASS ACTIONS & COMPLEX LITIGATION

McKenzie-Lopez v. City of Chicago, 15 CH 4802 (Circuit Court of Cook County, Illinois)

Appointed class counsel in lawsuit challenging the manner in which the City of Chicago operated and enforced its speed and red-light camera program. Obtained first ever settlement in connection with the City's traffic camera program that not only required changes to the City's practices and other injunctive relief, but also monetary relief valued in excess of \$125 Million.

Mansfield v. Air Line Pilots Ass'n Int'l, 06-cv-6869 (N.D. Ill.)

The firm was appointed lead class counsel and recovered \$44 million for a class of Senior Pilots of United Airlines in a class action, in which United Airlines was an intervening party, alleging that the defendant union improperly distributed the proceeds of \$550 million in convertible notes it received as part of United Airline's bankruptcy. According to published reports at the time, this settlement represented the largest amount ever paid by a union for violation of the duty of fair representation.

Ventas, Inc. v. Sullivan & Cromwell, 5232-02 (Sup. Ct., D.C.)

The firm prosecuted an action against a major Wall Street law firm, Sullivan & Cromwell, for legal malpractice resulting from advice given in connection with a complex corporate reorganization that required a payoff of public debt. Shortly before trial, the firm obtained a \$25.5 million settlement, one of the largest settlements or verdicts recorded in a legal malpractice case.

Otero v. Dart, 12-cv-3148 (N.D. Ill.)

Lead class counsel in certified class action against the Sherriff of Cook County for alleged unconstitutional detention of individuals acquitted of wrongdoing at trial. The firm obtained an unprecedented settlement that required changes to the Sherriff's release procedures, as well as monetary payments to individual class members.

Midwest Medical Records Assoc., Inc. v. Brown, 15 CH 16986 (Circuit Court of Cook County, Illinois)

Class action seeking the return of unlawful filing fees charged by the Cook County Clerk of Court. Obtained decision from the First District Appellate Court of Illinois finding that the voluntary payment doctrine does not apply to the payment of court filing fees. *Midwest Med. Records Ass'n, Inc. v. Brown*, 2018 IL App (1st) 163230. The firm was appointed class counsel and settled the case for \$5,218,155, an amount which represented full refunds for the class, as well as injunctive relief that prevented the Clerk from charging the fee at issue in the future.

Ehret v. Uber Technologies, Inc., 3:14-cv-113-EMC (N.D. Cal.)

Class counsel in certified class action against Uber for consumer fraud based on misrepresentations regarding gratuity to drivers. The firm obtained a settlement that provided a full refund to class members of the amount of the gratuity charge that Plaintiff claimed was unlawfully retained by Uber.

Jacobson v. Bd. of Ed. of City of Chicago, 94 L 5360 (Circuit Court of Cook County, Illinois)

The firm was retained by other attorneys to take over prosecution of class action brought on behalf of former Chicago public school principals who were unlawfully terminated as a result of a public act that was later found to be unconstitutional. Due to the firms' efforts, the suit settled for \$2 Million, an amount sufficient to compensate almost all class members the full amount of their lost wages.

In re Chicago Sun-Times Circulation Litigation, 04 CH 9757 (Circuit Court of Cook County, Illinois)

The firm was appointed to the executive committee in a class action on behalf of defrauded purchasers of advertising space in the Chicago Sun Times, which resulted in a settlement of \$15 million in cash and other benefits to the class.

Muniz v. Rexnord Corp., 04-cv-2405 (N.D. Ill.)

The firm was appointed co-lead counsel and obtained a \$15 million settlement in a class action against multiple defendants alleging that they had caused toxins to contaminate the groundwater in an area covering approximately 1,000 homes.

Barnes v. Air Line Pilots Ass'n Int'l, 13-cv-6243 (N.D. Ill.)

The firm was appointed lead counsel in certified class action brought on behalf of United management pilots against their union challenging an improper methodology of distributing a lump sum payment of \$400 million from United Airlines that was supposed to provide the pilots with retroactive pay. The firm obtained a settlement that compensated each class member with a significant portion of their lost pay.

Illinois ex rel. Zolna-Pitts v. ATI Holdings, LLC, 12 CH 27483 (Circuit Court of Cook County, Illinois)

The firm successfully prosecuted a whistleblower suit on behalf of former employee for alleged widespread insurance fraud in connection with the defendants' alleged practice of overbilling for physical therapy services.

PrimeCo Personal Comm., L.P., v. Ill. Commerce Comm'n, 98 CH 5500 (Circuit Court of Cook County, Illinois)

We were one of several firms working together on a class action challenging the constitutionality of a state statute enabling municipalities to enact ordinances imposing a fee or tax on wireless telephone users. After the Illinois Supreme Court affirmed the trial court's declaration that the fee was unconstitutional, our firm was instrumental in obtaining a partial settlement valued at approximately \$30 million. After that, we successfully obtained not only class certification with respect to the plaintiffs, but also obtained certification of a defendant class, and then settled the remaining claims against the defendant class for approximately \$18 million, for a total settlement of approximately \$48 million.

DEFENSE AND GOVERNMENT INVESTIGATIONS

Contingent Commissions and Bid-Rigging Investigation of Insurance Industry

The firm was retained by the Illinois Department of Financial and Professional Regulation as a special examiner to assist in its investigation of contingent commissions and related practices, such as steering and bid-rigging, in the insurance industry, including Aon Corporation and Arthur J. Gallagher & Co. In addition to its factual investigation, the firm assisted in coordinating efforts with the Illinois Department of Financial and Professional Regulation and Attorney Generals. Approximately \$250 million was obtained in settlements as a result of this coordinated effort.

Cheek v. United States, 498 U.S. 192 (1991)

The firm successfully argued the landmark case regarding the interpretation of willfulness under the criminal provisions of the Internal Revenue Code.

Castagnola v. Hewlett-Packard Company, 11-cv-5772, 2012 WL 2159385 (N.D. Cal. 2012)

The firm successfully defended a nationwide class action alleging deceptive advertising in connection with the online marketing of defendant's membership programs and obtained a dismissal of the case in its entirety and with prejudice.

Additional Government Investigations

The firm has successfully represented companies and individuals being investigated by Attorney Generals, the Federal Trade Commission and other government agencies throughout the United States, including in Illinois, California, New York, Florida, Texas, Arkansas, Missouri, Iowa, and Wisconsin.

NOTABLE PUBLIC INTEREST CASES

Lyon v. Illinois High Sch. Ass'n, 13-cv-00173, 2013 WL 140926 (N.D. Ill. 2013) dissolved, 2013 WL 309205 (N.D. Ill. 2013)

The firm obtained a temporary injunction against the Illinois High School Association (“IHSA”) on behalf of a high school athlete enjoining the IHSA from prohibiting him from participating in his high school’s wrestling program as a fifth-year senior. While the injunction was later dissolved, the student was allowed to wrestle the remainder of the regular season of his senior year. The lawsuit was profiled in the *Chicago Sun-Times* and on the front page of the *Chicago Daily Law Bulletin*.

Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Engineers, 191 F.3d 845 (7th Cir. 1999), rev'd, 531 U.S. 159 (2001)

In litigation and administrative proceedings, the firm stopped the construction of a huge landfill on a parcel of land in Cook and Kane counties. This litigation was pursued in Illinois Circuit, Appellate, and Supreme Courts, as well as the Federal District Court, Seventh Circuit Court of Appeals, and the U.S. Supreme Court. The firm obtained an injunction and a subsequent order from the Seventh Circuit Court of Appeals banning the construction of the landfill. Although the U.S. Supreme Court later reversed, the firm assisted in negotiating a sale of the property to a government entity. The landfill was never built, and the land became a protected wetland preserve.

OTHER NOTABLE RESULTS

Siegler v. Illinois Superconductor Corp., 96 CH 5824 (Circuit Court of Cook County, Illinois)

The firm represented a client for breach of an oral contract for the purchase of securities. The firm obtained a unique, unprecedented decision from the Circuit Court of Cook County confirming that under the Uniform Commercial Code oral contracts for the purchase and sale of securities are enforceable. The firm tried the case and obtained a \$6.5 million judgment.

International Profit Associates, Inc. v. Paisola, 461 F. Supp. 2d 672 (N.D. Ill. 2006)

The firm obtained an injunction shutting down a website that was posting negative and defamatory information about one its clients and obtained a first-of-its-kind decision on internet law which continues to be cited around the Country.