IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

BROWARD PSYCHOLOGY, P.A., individually and on behalf of all others similarly situated, *Plaintiff*, *v.* SINGLECARE SERVICES, LLC, a Delaware limited liability company, *Defendant.*	Case No. CACE-18-022689

PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT

Plaintiff Broward Psychology, P.A. on behalf of itself and all others similarly situated ("Plaintiff") respectfully moves this Court to enter the Final Order Approving Settlement and Certifying a Class (hereinafter, "Final Approval Order"), a copy of which is attached as Exhibit A. In support of this Motion, Plaintiff states as follows.

I. Preliminary Approval and Dissemination of Notice

On January 29, 2019, the Court held a hearing to consider Plaintiff's request for preliminary approval of settlement agreement, conditionally certifying a Class, appointing Plaintiff as the class representative, appointing Avi R. Kaufman and Kaufman P.A. as class counsel, directing the issuance of class notice, and scheduling a fairness hearing. After considering the parties' papers, reviewing the procedural history and record, and hearing argument of counsel, the Court entered an Order Preliminarily Approving Settlement, Conditionally Certifying A Class and Granting Other Relief ("Preliminary Approval Order").

In accordance with the Court's Preliminary Approval Order, Plaintiff caused the notice to be sent to the class members' fax numbers involved in the litigation and established a settlement class website. *See* Declaration of Avi R. Kaufman, attached as Exhibit B. No class member opted out of the settlement and no person objected to the settlement. *Id*.

II. Background and Summary of Settlement

On February 2, 2018, Plaintiff initiated the legal process ultimately resulting in the filing of the Complaint against Defendant SingleCare Services, LLC ("SingleCare") on September 25, 2018. The Complaint asserts claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227, and its implementing regulations, 47 CFR 64.1200, arising from Plaintiff's receipt of certain fax messages. The Complaint seeks monetary, declaratory and injunctive relief on behalf of Plaintiff, individually, and a putative class of other individuals and entities that received the same or substantively similar faxes as Plaintiff received between September 25, 2014 and the present. In the Complaint, Plaintiff seeks to certify this class pursuant to Florida Rule of Civil Procedure l.220(a), (b)(2), and (b)(3).

On November 26, 2018, SingleCare filed an Answer and Affirmative Defenses to the Complaint, denying all material allegations and asserting affirmative defenses of prior express consent, lack of standing, lack of statutory standing, laches, violation of the Fifth and Fourteenth Amendments, violation of the First Amendment, de minimis harm, and lack of vicarious liability. Ultimately, Defendant contests liability and damages for the claims asserted in the Complaint.

In the interim, the parties began exploring resolution of Plaintiff's claims on a class-wide basis. These discussions were prompted by the parties' desire to avoid the expense, uncertainties and the burden of protracted litigation , and to put to rest any and all claims or causes of actions

that have been, or could have been, asserted against SingleCare arising out of the unsolicited transmission of fax advertisements to Plaintiff and others (the "Fax Transmissions").

In furtherance of these settlement discussions, the parties took a number of steps.

First, Plaintiff conducted informal discovery, Defendant voluntarily produced to Plaintiff information relating to the Fax Transmissions. Defendant also agreed to and did answer specific questions posed by Plaintiff directed at the integral issues in this case.

Second, the parties jointly retained a mediator, Jeffrey Grubman, to mediate their settlement discussions.

Third, the parties conducted a mediation session on April 30, 2018 to explore settlement. The parties prepared extensive mediation statements before the mediation setting forth their respective positions. At mediation, the parties exchanged offers and counteroffers and negotiated the points of each vigorously, but did not reach an agreement to settle the action. After mediation, the parties continued to discuss the facts and legal merit of their respective positions, and continued to exchange counteroffers. The mediation and post-mediation negotiations resulted in a settlement now presently before this Court for consideration.

In the Settlement Agreement, the parties agreed to a settlement of this action that would involve the certification, for settlement purposes only, of a class of persons, subject to the approval and determination of the Court as to the fairness, reasonableness and adequacy of the settlement, which, if approved, will result in final certification of the Settlement Class and dismissal of the action with prejudice.

III. The Class Was Notified of Settlement

The Court approved the parties' request to send the notice by fax to the telephone numbers involved in the litigation, and the parties did so. Exhibit B. This method of class notice complies with due process and is consistent with Rule 1.220 of the Florida Rules of Civil Procedure, which requires that:

> The notice shall be given to each member of the class who can be identified and located through reasonable effort and shall be given to the other members of the class in the manner determined by the court to be most practicable under the circumstances.... The notice shall inform each member of the class that (A) any member of the class who files a statement with the court by the date specified in the notice asking to be excluded shall be excluded from the class, (B) the judgment, whether favorable or not, will include all members who do not request exclusion, and (C) any member who does not request exclusion may make a separate appearance within the time specified in the notice [Rule 1.220(d)(2) of the Florida Rules of Civil Procedure.]

Further, the contents of the notice met the requirements of Rule 1.220 and of due process. The notice described the case and the settlement and clearly explained the class members' rights. It explained that class members could object to the settlement and gave precise instructions on how to do so. *Id.* The notice further informed class members that Class Counsel would seek an award of attorney's fees of $308,369.99 and reimbursement of expenses. *Id.* The notice identified Class Counsel and provided contact information for class members who had questions about the settlement. *Id.* As ordered by the Court in the Order Preliminarily Approving Settlement, the notice was sent by fax to the fax numbers targeted in Defendant's fax advertising campaign. Exhibit B. A settlement website was also established as a means for members of the Settlement Class to obtain notice of and information about the Settlement, including access to this Agreement, the Long-Form Notice, and the order preliminarily approving this Settlement. *Id*.

IV. Relief Offered to Class Is Fair, Reasonable and Adequate

If the settlement is approved, SingleCare has agreed to make payments to the class members who submitted timely and valid claims. Experienced counsel with an understanding of the strengths and weaknesses of their respective positions in this case negotiated the settlement terms at arm's-length through a mediation session, with the assistance of a Florida mediator, and continued discussions and ultimately reached an agreement following mediation. Accordingly, Plaintiff and Plaintiff's counsel concluded that it would be in the Class's best interests to settle the action under the terms and conditions of the parties' Settlement Agreement without the further uncertainty of litigation.

Florida appellate decisions setting forth the standards for approval of a settlement under Rule 1.220 are sparse. The District Courts of Appeals in Florida rely on both state and federal decisions in evaluating whether a settlement of a class action suit is "fair, adequate and reasonable." *Ramos v. Philip Morris Companies, Inc.,* 743 So. 2d 24, 28 (Fla. 3d DCA 1999). The "fair, adequate and reasonable" standard is the same standard applied by the Eleventh Circuit to determine whether a class wide settlement should be approved under Federal Rule Civil Procedure 23. *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 (11th Cir. 1994); *Bennett v. Behring Corp.,* 737 F.2d 982, 986 (11th Cir. 1984).

Determining the fairness of the settlement is left to the sound discretion of the trial court, but the court's judgment should be informed by the "strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement." *Id.* "There is an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex." *Access Now, Inc. v. Claire's Stores, Inc.,* No. 00-

140170CIV, 2002 WL 1162422 at *4 (S.D. Fla. May 7, 2002).

The Eleventh Circuit has identified six factors to be considered in analyzing the fairness, reasonableness and adequacy of a class settlement:

> (1) the existence of fraud or collusion behind the settlement;
>
> (2) the complexity, expense, and likely duration of the litigation;
>
> (3) the stage of the proceedings and the amount of discovery completed;
>
> (4) the probability of the plaintiffs' success on the merits;
>
> (5) the range of possible recovery; and
>
> (6) the opinions of the class counsel, class representatives, and the substance and amount of opposition to the settlement.

Leverso, 18 F.3d at 1530 n.6; *see also Bennett*, 737 F.2d at 986. The analysis of these factors set forth below shows this settlement to be eminently fair, adequate and reasonable.

a. There Was No Fraud or Collusion.

As set forth above, the parties began vigorously litigating this matter until they reached the settlement. The contested nature of the proceedings in this Action demonstrates the absence of fraud or collusion behind the Settlement. *See, e.g*., *In re Sunbeam Sec. Litig*., 176 F. Supp. 2d 1323, 1329 n.3 (S.D. Fla. 2001); *Warren v. City of Tampa*, 693 F. Supp. 1051, 1055 (M.D. Fla. 1988) (record disclosed no evidence of collusion, but to the contrary showed "that the parties conducted discovery and negotiated the terms of settlement for an extended period of time"), *aff'd*, 893 F.2d 347 (11th Cir. 1989).

Class Counsel negotiated the settlement with similar vigor. Plaintiff and the Settlement Class were represented by experienced counsel throughout the negotiations. Class Counsel and SingleCare engaged in formal mediation before an experienced and respected mediator and

continued negotiations after the close of mediation. All negotiations were arm's-length and extensive. *See also Perez v. Asurion Corp*., 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007) (concluding that class settlement was not collusive in part because it was overseen by "an experienced and well-respected mediator").

b. The Settlement Will Avoid Years of Complex and Expensive Litigation.

The claims and defenses are complex; litigating them is both difficult and time-consuming, and recovery by any means other than settlement would require additional years of litigation. *See United States v. Glens Falls Newspapers, Inc.*, 160 F. 3d 853, 856 (2d Cir. 1998) (noting that "a principal function of a trial judge is to foster an atmosphere of open discussion among the parties' attorneys and representatives so that litigation may be settled promptly and fairly so as to avoid the uncertainty, expense and delay inherent in a trial."); *In re Domestic Air Transp. Antitrust Litig*., 148 F.R.D. 297, 317, 325-26 & n.32 (N.D. Ga. 1993) ("[A]djudication of the claims of two million claimants could last half a millennium").

In contrast, the settlement provides immediate and substantial monetary benefits to 9.738 Settlement Class Members. As stated in *In re Shell Oil Refinery*, 155 F.R.D. 552 (E.D. La. 1993):

> The Court should consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, "[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush."

Id. at 560 (alterations in original) (quoting *Oppenlander v. Standard Oil Co*., 64 F.R.D. 597, 624 (D. Colo. 1974)); *see also In re U.S. Oil & Gas Litig*., 967 F.2d 489, 493 (11th Cir. 1992) (noting that complex litigation "can occupy a court's docket for years on end, depleting the resources of the parties and taxpayers while rendering meaningful relief increasingly elusive").

Particularly because the "demand for time on the existing judicial system must be evaluated in determining the reasonableness of the settlement," *Ressler v. Jacobson*, 822 F. Supp. 1551, 1554 (M.D. Fla. 1992) (citation omitted), there can be no doubt about the adequacy of the present settlement, which provides reasonable benefits to the Settlement Class.

c. The Factual Record Is Sufficiently Developed to Enable Class Counsel to Make a Reasoned Judgment.

Courts also consider "the degree of case development that class counsel have accomplished prior to settlement" to ensure that "counsel had an adequate appreciation of the merits of the case before negotiating." *In re General Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig*., 55 F.3d 768, 813 (3d Cir. 1995). At the same time, "[t]he law is clear that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery should be required to make these determinations." *Ressler*, 822 F. Supp. at 1555.

Class Counsel negotiated and finalized the Settlement after significant discussions regarding the factual and legal issues in the case and after taking discovery. Class Counsel's analysis and understanding of the various legal obstacles positioned them to evaluate with confidence the strengths and weaknesses of Plaintiff's claims and Defendant's defenses through the conclusion of the litigation, as well as the range and amount of damages that were potentially recoverable if the Action successfully proceeded to judgment on a class-wide basis.

d. Plaintiff and the Class Still Faced Significant Obstacles to Prevailing.

The "likelihood and extent of any recovery from the defendants absent . . . settlement" is another important factor in assessing the reasonableness of a settlement. *Domestic Air*, 148 F.R.D. at 314; *see also Ressler*, 822 F. Supp. at 1555 ("A Court is to consider the likelihood of the plaintiff's success on the merits of his claims against the amount and form of relief offered in the settlement before judging the fairness of the compromise.").

Class Counsel believe that Plaintiff had a solid case against Defendant. Even so, Class Counsel is mindful that Defendant advanced significant defenses that would have been required to overcome in the absence of the settlement. This Action involved several litigation risks that loomed in the absence of settlement including, but not limited to, a motion for class certification, a motion for summary judgment, motions challenging experts, trial, as well as appellate review following a final judgment.

Apart from the risks, continued litigation would have involved substantial delay and expense, which further counsels in favor of Final Approval. The uncertainties and delays from this process would have been significant.

Given the myriad risks attending these claims, as well as the certainty of substantial delay and expense from ongoing litigation, the settlement cannot be seen as anything except a fair compromise. *See, e.g.*, *Haynes v. Shoney's*, No. 89-30093-RV, 1993 U.S. Dist. LEXIS 749, at *16-17 (N.D. Fla. Jan. 25, 1993) ("The risks for all parties should this case go to trial would be substantial. …. It is possible that trial on the merits would result in … no relief for the class members. … Based on … the factual and legal obstacles facing both sides should this matter continue to trial, I am convinced that the settlement … is a fair and reasonable compromise."); *Bennett v. Behring Corp.*, 96 F.R.D. 343, 349-50 (S.D. Fla. 1982), *aff'd*, 737 F.2d 982 (11th Cir. 1984) (plaintiffs faced a "myriad of factual and legal problems" creating "great uncertainty as to the fact and amount of damage," making it "unwise [for plaintiffs] to risk the substantial benefits which the settlement confers . . . to the vagaries of a trial").

e. The Benefits Provided by the Settlement Are Fair, Adequate and Reasonable Compared to the Range of Possible Recovery.

In determining whether a settlement is fair given the potential range of recovery, the Court should be guided by "the fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate." *Behrens v. Wometco Enters., Inc*., 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990). Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery." *Id*. "[T]he court must remember that "compromise is the essence of settlement. A just result is often no more than an arbitrary point between competing notions of reasonableness." *Raines v. Florida*, 987 F. Supp. 1416, 1418 (N.D. Fla. 1997) (citing *Bennett*, 737 F.2d at 986) (internal annotations omitted). This is because fairness of a settlement must be evaluated in light of "the likelihood of success on the merits, the complexity, expense, and duration of litigation, the judgment and experience of trial counsel, and objections raised to the settlement." *Id.* Thus, courts regularly find settlements to be fair where "[p]laintiffs have not received the optimal relief." *Warren*, 693 F. Supp. at 1059; *see, e.g*., *Great Neck Capital Appreciation Investment P'ship, L.P. v. PriceWaterHouseCoopers, L.L.P*., 212 F.R.D. 400, 409-10 (E.D. Wis. 2002) ("The mere possibility that the class might receive more if the case were fully litigated is not a good reason for disapproving the settlement.").

Class Counsel was well-positioned to evaluate the strengths and weaknesses of Plaintiff's claims, as well as the appropriate basis upon which to settle them.

Through this settlement, Plaintiff secured a recovery of $95 per Class Member. This Settlement provides an extremely fair and reasonable recovery to the Settlement Class in light of Defendant's defenses, as well as the challenging, unpredictable path of litigation that Plaintiff would otherwise have continued to face in the trial and appellate courts. *See Gehrich v. Chase*

Bank USA, N.A., 316 F.R.D. 215, 2016 WL 806549, at *7 (N.D. Ill. 2016) ($52.50 payout for each claimant); *Arthur v. Sallie Mae, Inc.*, 2012 U.S. Dist. LEXIS 132413, 2012 WL 4075238 (W.D. Wash. Sept. 17, 2012) (approving TCPA settlement where each class claimant estimated to receive between $20 and $40).

f. The Opinions of Settlement Class Counsel, the Plaintiff, and Absent Class Members Favor Approval of the Settlement.

Class Counsel endorses the Settlement. The Court should give "great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation." *Warren*, 693 F. Supp. at 1060; *see also Domestic Air*, 148 F.R.D. at 312-13 ("In determining whether to approve a proposed settlement, the Court is entitled to rely upon the judgment of the parties' experienced counsel. '[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.'") (citations omitted).

The objection and opt-out period has closed, and **there have been no objections and no opt-outs**. Exhibit B. This is another indication that the Settlement Class is clearly satisfied with the settlement.

V. The Court Should Approve the Payment of Attorney's Fees and Costs to Class Counsel

As part of the settlement, SingleCare has agreed to pay Class Counsel $308,369.99 as attorney's fees for the work in this matter and to reimburse Class Counsel's out-of-pocket expenses totaling. Settlement Agreement ¶ 66.

In Florida, "objectivity and consistency in setting fees are best achieved by beginning the attorney-fee analysis with a lodestar amount based on the hours expended on legal services and rates charged for similar services." *Kuhnlein v. Department of Revenue*, 662 So.2d 309, 312 (Fla. 1995). A "multiplier" is applied to the lodestar to calculate reasonable attorney's fees. *Id*. at 313.

When attorney's fees are obtained from a "common-fund category," a multiplier of up to 5 is appropriate. *Id*. at 315. A "common-fund category" case deserves a higher multiplier than a "fee shifting case," which should be capped at 2.5. *Id*. "[A] multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing a fee which remains within the bounds of reasonableness." *Id*.

Here, the attorney's fees are derived from a "common-fund category," because money was made available to pay the class members. As a result, a "multiplier" of up to 5 would be acceptable. Although SingleCare was not required to specially segregate any funds, it nonetheless made available up to $95.00 for each of the 9,738 fax advertisements sent on Defendant's behalf. SingleCare agreed to pay attorney's fees of $308,369.99 plus reimburse reasonable out-of-pocket expenses. Settlement Agreement ¶ 66. Class Counsel's total lodestar is $154,350 at a rate of $600 per hour. Exhibit B. The total costs and expenses for Plaintiff's counsel is $2,835.04. *Id*.

Florida courts routinely approve substantially higher billing rates on an hourly basis in class actions. In 1995, the Florida Supreme Court approved an award of attorneys' fees totaling $6,497,467.50 based on a 5 times multiplier. *See Kuhnlein v. Department of Revenue,* 662 So.2d 309, 312 (Fla. 1995); *see also Florida Dept. of Agriculture and Consumer Services v. Bogoroff,* 132 So.3d 249 (Fla. 4th DCA 2014).

The agreed amount in this case involves an hourly rate of $600 and a multiplier of less than 2, both well within the accepted ranges. Some additional time will be incurred preparing for and attending the Final Fairness Hearing on June 4, 2019, continuing to administer the payment

of valid claims, and handling any other matters that may arise until the conclusion of the matter. As a result, the agreed upon fee is reasonable.

Additionally, none of the class members objected to Class Counsel's fees. The lack of objection from members of the class is an important factor in awarding fees. *See, e.g., In re Automotive Refinishing Paint Antitrust Litigation,* 2008 WL 63269, *4 (E.D. Pa. Jan. 3, 2008) ("A lack of objections demonstrates that the Class views the settlement as a success and finds the request for counsel fees to be reasonable."). Here, the notice advised class members that Class Counsel would request attorney's fees of $308,369.99, plus costs, and no class members objected. In *Hensley v. Eckerhalt,* 461 U.S. 424, 437 (1983), the U.S. Supreme Court held that negotiated, agreed-upon attorneys' fee provisions, such as the one here, are the "ideal" towards which the parties should strive: "A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." In *Malchman v. Davis,* 761 F.2d 893 (2d Cir. 1985), the federal court of appeals concluded that courts should not interfere in fee arrangements between settling class action parties when the defendant has agreed to pay the fees:

> [W]here ... the amount of the fees is important to the party paying them, as well as the attorney recipient, it seems to the author of this opinion that an agreement 'not to oppose' an application for fees up to a point is essential to completion of the settlement, because the defendants want to know their total maximum exposure and the plaintiffs do not want to be sandbagged. It is difficult to see how this could be left entirely to the courts for determination after the settlement. [761 F.2d at 905 n.5.]

Here, the parties' agreement on attorney's fees is reasonable and proper under well-established legal precedent. The Court should permit the parties to settle on their agreed terms. The Court should approve SingleCare's agreement to pay Class Counsel's fees and expenses as requested.

VI. The Court Should Approve the Agreed Incentive Payment to Plaintiff as the Class Representative

Pursuant to the Settlement, Class Counsel respectfully request, and Defendant does not oppose, a Service Award for Class Representative Broward Psychology, P.A. The amount of the requested Service Award is $5,000. Agreement ¶ 67. Service awards "compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Allapattah Servs., Inc. v. Exxon Corp*., 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006). "[T]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action." *David v. American Suzuki Motor Corp*., 2010 WL 1628362, at *6 (S.D. Fla. Apr. 15, 2010). Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives. *See, e.g*., *Stallworth v. Monsanto Co.*, No. PCA 73-45, 1980 U.S. Dist. LEXIS 12858, at *20-21 (N.D. Fla. June 26, 1980) (approving service awards ranging from $10,000 to $20,000 to four named plaintiffs, "each of whom devoted substantial time to the prosecution of th[e] lawsuit"); *Spicer v. Chicago Bd. Options Exchange, Inc*., 844 F. Supp. 1226, 1267-68 (N.D. Ill. 1993) (collecting cases approving service awards ranging from $5,000 to $100,000, and awarding $10,000 to each named plaintiff).

The relevant factors include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation. *See, e.g*., *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

The above factors, as applied to this Action, demonstrate the reasonableness of the requested Service Award to Plaintiff. Plaintiff provided substantial assistance that enabled Class Counsel to successfully prosecute the action including submitting to interviews with Class

Counsel, locating and forwarding responsive documents and information. In so doing, Plaintiff assisted forming the theory of the case, and positioning it for settlement.

Plaintiff not only devoted time and effort to the litigation, but the end result of his efforts, coupled with those of Class Counsel, provided a substantial benefit to the Settlement Class. If the Court approves it, the total Service Award will be $5,000. The Service Award requested here is reasonable and should be approved.

VII. Conclusion

WHEREFORE, Plaintiff requests that the Court grant the Motion and enter an Order (in the form attached hereto as Exhibit A) granting final approval of the Settlement Agreement and its terms and certifying a class for settlement purposes.

Respectfully submitted this 23rd day of April, 2019.

Respectfully,

/s/ Avi R. Kaufman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 23, 2019 a copy of the foregoing has been served on all counsel of record through Florida's E-Filing Portal.

/s/ Avi R. Kaufman
Avi R. Kaufman

EXHIBIT A

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

BROWARD PSYCHOLOGY, P.A., individually and on behalf of all others similarly situated, *Plaintiff*, *v.* SINGLECARE SERVICES, LLC, a Delaware limited liability company, *Defendant.*	Case No. CACE-18-022689

FINAL APPROVAL ORDER

The matter coming before the Court on the parties' request for final approval of the class action settlement, including approval of fees and expenses, due notice given, the parties appearing through counsel, and the Court fully advised in the premises, IT IS HEREBY ORDERED:

1. This Court has jurisdiction over the parties, the members of the Settlement Class, and the claims asserted in this lawsuit.

2. Pursuant to Rule 1.220 of the Florida Rules of Civil Procedure, the settlement of this action, as embodied in the terms of the Settlement Agreement, is hereby finally approved as a fair, reasonable, and adequate settlement of this case in the best interests of the Settlement Class in light of the factual, legal, practical, and procedural considerations raised by this case.

3. The Settlement Class is defined as follows:

> All persons who (i) on or after four years prior to the day the complaint is filed through the date of preliminary approval (ii) received a telephone facsimile message of material advertising the commercial availability or quality of any property, goods or services by or on behalf of SingleCare.

Excluded from the Settlement Class are SingleCare Services, LLC ("SingleCare"), any

parent, subsidiary, affiliate or controlled person of Aqualogic, the officers, directors, agents, servants or employees of SingleCare, and the judges and staff of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. The parties expressly agreed to this Settlement Class definition for settlement purposes.

4. The Court finds that the Settlement Agreement has been entered into in good faith following arm's-length negotiations.

5. Upon the Declaration of Avi R. Kaufman, the Court finds that notice was given to the Class Members, that it was the best notice practicable under the circumstances, and that it satisfied the requirements of due process and Rule 1.220.

6. No objection was received and no party appeared at the fairness hearing to object to the settlement.

7. After due consideration of the uncertainty about the likelihood of the Class's ultimate success on the merits; the range of the Class's possible recovery; the complexity, expense and duration of the litigation; the substance and amount of opposition to the settlement; and the state of proceedings at which the settlement was achieved; all written submissions, declarations, and arguments of counsel; and after notice and hearing, this Court finds that the settlement is fair, adequate and reasonable. This Court also finds that the financial settlement terms fall within the range of settlement terms that would be considered fair, adequate and reasonable. Accordingly, this Settlement Agreement should be and is approved and shall govern all issues regarding the settlement and all rights of the Parties, including the Class Members. Each Class Member shall be bound by the Settlement Agreement, including being subject to the release set forth in the Settlement Agreement.

8. SingleCare, has created a settlement fund (the "Settlement Fund") to pay settlement

administration costs, all claims by Settlement Class members, Class Counsel's fees and out-of-pocket expenses, and the Class Representative's incentive award. Unclaimed monies in the Settlement Fund shall revert to Lexington.

9. As agreed in the Settlement Agreement, each member of the Settlement Class who submits a timely and valid Claim Form will be paid up to $95.00 each as expressly provided is the Settlement Agreement.

10. Pursuant to the parties' agreement, the Court approves Class Counsel's attorney's fees in the total amount of $308,369.000 and out-of-pocket expenses in the amount of $2,835.04. In accordance with the Settlement Agreement, these amounts shall be paid from the Settlement Fund as expressly provided in the Settlement Agreement.

11. Pursuant to the parties' agreement, the Court approves a $5,000.00 incentive award to Broward Psychology, P.A. for serving as the Class Representative. In accordance with the Settlement Agreement, this amount shall be paid from the Settlement Fund as expressly provided in the Settlement Agreement.

12. The Court adopts and incorporates all of the terms of the Settlement Agreement by reference here. The Parties to the Settlement Agreement shall carry out their respective obligations under that Agreement.

13. This action, including all claims against Defendant asserted in this lawsuit, or which could have been asserted in this lawsuit, by or on behalf of Plaintiff and all Settlement Class members against Defendant, is hereby dismissed with prejudice and without taxable costs to any Party.

14. All claims or causes of action of any kind by any Settlement Class member brought in this Court or any other forum (other than those by persons who have opted out of this action) are barred pursuant to the releases set forth in the Settlement Agreement.

15. If (a) the Settlement Agreement is terminated pursuant to its terms, or (b) the

Settlement Agreement or Final Approval Order do not for any reason become effective, or (c) the Settlement Agreement or Final Approval Order are reversed, vacated, or modified in any material or substantive respect, then any and all orders entered pursuant to the Settlement Agreement shall be deemed vacated. If the settlement does not become final in accordance with the terms of the Settlement Agreement, this Final Approval Order shall be void and shall be deemed vacated.

16. The Court finds that there is no just reason to delay the enforcement of this Final Approval Order.

DONE AND ORDERED in Broward County, Florida, on _____ ___, 2019.

_____
JOHN B. BOWMAN
CIRCUIT COURT JUDGE

cc: all counsel of record

EXHIBIT B

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

BROWARD PSYCHOLOGY, P.A., individually and on behalf of all others similarly situated, *Plaintiff*, *v.* SINGLECARE SERVICES, LLC, a Delaware limited liability company, *Defendant.*	Case No. CACE-18-022689

DECLARATION OF AVI R. KAUFMAN

I, Avi R. Kaufman, declare under penalty of perjury that the following statements are true:

1. I am an attorney duly admitted to practice law in the state of Florida. I am a member of the law firm of Kaufman P.A. I submit this declaration in support of the motion for final approval of settlement agreement. The facts herein stated are true of my own personal knowledge or information supplied to me, and if called to testify to such facts, I could and would do so competently.

2. On January 29, 2019, this Court entered an order preliminary approving the parties' settlement and appointing Kaufman P.A. as Class Counsel.

3. Pursuant to the preliminary approval order, on February 8, 2019, the settlement website was established.

4. On March 5, 2019, the settlement administrator broadcast the fax notice to the 9,738 fax numbers associated with class members that were supplied by SingleCare. Of the 9,738 class member numbers, 7,562 were successfully sent.

5. On Mach 12, 2019, the settlement administrator rebroadcast the fax notice to the remaining 2,176 class member phone numbers. Of these rebroadcast fax notices, 939 were successfully sent.

6. As of April 9, 2019, the deadline to object or opt out of the settlement, no class members had objected or opted out of the settlement.

7. Class counsel incurred a total lodestar of $154,350 in attorneys' fees based on 257.25 hours of work at a rate of $600 per hour, plus $2,835.04 in expenses in the litigation.

8. It is my opinion that the settlement achieves a result which is fair, reasonable and adequate.

Dated: April 23, 2019

/s/ Avi R. Kaufman
Avi R. Kaufman