

CLASS ACTION SETTLEMENT AGREEMENT

John Fralish (“Plaintiff”) and Ceteris Portfolio Services, LLC (“Defendant”) enter into this arm’s-length class action settlement agreement (“Agreement”).

1. Recitals:

- 1.1. On March 7, 2022, Plaintiff filed a class action complaint against Defendant, styled *John Fralish, on behalf of himself and others similarly situated, v. Ceteris Portfolio Services, LLC*, Case No. 3:22-cv-00176-DRL-MGG (N.D. Indiana) (the “Lawsuit”), through which Plaintiff alleges that Defendant violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.
- 1.2. Defendant denies the material allegations included in the Lawsuit.
- 1.3. As a result of arm’s-length negotiations overseen by the Hon. Diane M. Welsh (Ret.), Plaintiff and Defendant now intend to settle and finally resolve all claims Plaintiff asserts through the Lawsuit.
- 1.4. Aware of the substantial expense, delay, and inherent risk associated with litigation, Plaintiff and his counsel recognize that in light of the recovery that results from the settlement memorialized by this Agreement, continued litigation is not in the best interest of members of the Settlement Class (as defined below) that is the subject of this Agreement.
- 1.5. Also aware of the substantial expense, delay, and inherent risk associated with litigation, Defendant intends to buy peace by entering into the settlement memorialized by this Agreement.
- 1.6. Plaintiff and his counsel believe that the settlement memorialized by this Agreement is fair, adequate, and reasonable.
- 1.7. Plaintiff and Defendant agree to undertake all steps necessary to secure the Court’s approval of the settlement memorialized by this Agreement.
- 1.8. This Agreement is not to be construed as an admission or concession by Plaintiff that there is any infirmity in the claims he asserts through the Lawsuit.
- 1.9. The settlement memorialized by this Agreement is not to be construed as an admission or concession by Defendant regarding liability or wrongdoing, and Defendant denies any liability, denies that it violated the TCPA, and denies any other wrongdoing.

2. Definitions:

- 2.1. “Approved Claim Form” means a claim form that a Settlement Class Member timely submits, and that the Claims Administrator approves for payment.

- 2.2. “Claims Administrator,” subject to the Court’s approval, means KCC Class Action Services, LLC.
- 2.3. “Claim Form” means the form that Settlement Class Members must submit—whether by mail or online—to obtain a monetary recovery in connection with the settlement memorialized by this Agreement.
- 2.4. “Class Counsel” means Greenwald Davidson Radbil PLLC.
- 2.5. “Class Notice” means the notice that the Court approves in a form substantially similar to Exhibit 1 to this Agreement, which includes a postcard notice with detachable claim form, and a question-and-answer notice to appear on the dedicated settlement website.
- 2.6. “Fairness Hearing” means the hearing that the Court conducts under Federal Rule of Civil Procedure 23 to consider the fairness, adequacy, and reasonableness of the settlement memorialized by this Agreement.
- 2.7. “Finality Date” means the date after which the Court enters a final order and judgment and the time to appeal the final order and judgment expires without appeal, or any appeal is dismissed, or the final order and judgment is affirmed and not subject to review by any court.
- 2.8. “Final Order and Judgment” means the final order and judgment that the Court enters in a form substantially similar to Exhibit 3 to this Agreement.
- 2.9. “Order Preliminarily Approving the Settlement” means the order, in a form substantially similar to Exhibit 2 of this Agreement, preliminarily approving the settlement memorialized by this Agreement and authorizing the dissemination of class notice.
- 2.10. “Preliminary Approval Date” means the date the Court enters the Order Preliminarily Approving the Settlement.
- 2.11. “Released Parties” means Ceteris Portfolio Services, LLC and each of its past, present, and future parents, subsidiaries, affiliated companies, and corporations, and each of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, assigns or related entities, and each of their respective executors, successors, assigns and legal representatives.
- 2.12. “Released Claims” means all claims that Plaintiff and Settlement Class Members have asserted or could have asserted that stem from the receipt of voice mail box direct drops or ringless voice messages delivered by or on behalf of Defendant, which Settlement Class Members have, or had, under the Telephone Consumer Protection Act, 47 U.S.C.

§ 227, or any other similar state or federal statute, relevant regulatory or administrative promulgations and case law, from June 1, 2021 through February 1, 2023.

2.13. “Releasors” means Plaintiff and every Settlement Class Member who does not timely and validly opt out of the Settlement Class.

2.14. “Settlement” means the settlement memorialized by this Agreement.

2.15. “Settlement Class” means the class that the Court certifies for settlement purposes, the definition of which the parties propose as:

All persons and entities throughout the United States (1) to whom Ceteris Portfolio Services, LLC delivered, or caused to be delivered, a voice mail box direct drop or ringless voice message, (2) between June 1, 2021 and February 1, 2023, (3) to a cellular telephone number Ceteris Portfolio Services, LLC designated with an internal “wrong number” designation at some point during the account history.

2.16. “Settlement Class Members” means all members of the Settlement Class.

2.17. “Settlement Fund” means the non-reversionary amount of \$761,850.00, subject to paragraph 4.3, below.

3. Jurisdiction:

3.1. The parties agree that the Court has, and will continue to have, jurisdiction to issue any order necessary to effectuate, consummate, and enforce the terms of the Settlement, to approve attorneys’ fees, costs, expenses, and a service award, and to supervise the administration and distribution of proceeds associated with the Settlement.

4. Certification:

4.1. Plaintiff and Defendant agree to certification of the Settlement Class for settlement purposes only.

4.2. Defendant identified 8,465 unique cellular telephone numbers with a “wrong number” designation in its records and to which Defendant delivered, or attempted to deliver, a voice mail box direct drop or ringless voice message between June 1, 2021 and February 1, 2023.

4.3. Any increase in the number of unique telephone numbers above these 8,465 unique telephone numbers will result in an increase to the Settlement Fund of \$90.00 for each additional unique telephone number above 8,465.

4.4. Defendant will deliver to Class Counsel, within 14 days of mutual execution of this Agreement, a list of the cellular telephone numbers with a “wrong number” designation

in its records and to which it delivered, or attempted to deliver, a voice mail box direct drop or ringless voice message between June 1, 2021 and February 1, 2023.

5. Preliminary Approval:

- 5.1. Plaintiff will file an unopposed motion to preliminarily approve the Settlement.
- 5.2. Through his motion to preliminarily approve the Settlement, Plaintiff will request that:

The Court preliminarily certify the Settlement Class for settlement purposes only, appoint Plaintiff as the representative for the Settlement Class, and appoint Class Counsel as counsel for the Settlement Class;

The Court preliminarily approve the Settlement as fair, reasonable, and adequate, and within the reasonable range of possible final approval;

The Court approve the Class Notice and find that the proposed notice plan constitutes the best notice practicable under the circumstances, and that it satisfies due process and Rule 23 of the Federal Rules of Civil Procedure;

The Court set the date and time for the Fairness Hearing; and

The Court set the deadline for Settlement Class Members to file Claim Forms and to submit exclusions and objections to the Settlement.

- 5.3. Neither Plaintiff nor Defendant will take any action inconsistent with Plaintiff's motion to preliminarily approve the Settlement.

6. Class Action Fairness Act Notice:

- 6.1. Defendant will be responsible for serving the Class Action Fairness Act ("CAFA") notice required by 28 U.S.C. § 1715 within ten days after Plaintiff files his unopposed motion to preliminarily approve the Settlement.
- 6.2. Defendant will provide Class Counsel with a copy of the CAFA notice no later than two days after it is served.
- 6.3. Defendant will also file with the Court, at least thirty days prior to the Fairness Hearing, a notice attesting to its compliance with CAFA.
- 6.4. Defendant may have the Claims Administrator effectuate CAFA notice on its behalf.

7. Notice to Members of the Settlement Class:

- 7.1. The Claims Administrator will be responsible for all matters relating to the administration of the Settlement.

7.2. The Claims Administrator’s responsibilities will include, but will not be limited to:

Disseminating notice to potential Settlement Class Members;

Performing an initial reverse lookup process for the 8,465 telephone numbers identified by Defendant as associated with potential Settlement Class Members;

Depending on the results of the initial reverse lookup process, and to ensure appropriate reach, possibly performing a second reverse look up process for certain of the telephone numbers identified by Defendant as associated with potential Settlement Class Members;

Sending direct mail notice by postcard, with a detachable Claim Form, to potential Settlement Class Members, where possible;

Establishing a dedicated website through which Settlement Class Members can submit claims;

Fielding inquiries about the Settlement;

Processing settlement claims;

Acting as a liaison between Settlement Class Members, Class Counsel, and counsel for Defendant;

Approving settlement claims, and rejecting settlement claims where there is evidence of fraud;

Directing the mailing of settlement checks to Settlement Class Members; and

Performing any other tasks reasonably required of it.

7.3. The addresses of potential Settlement Class Members obtained by the Claims Administrator may be subject to confirmation or updating as follows:

The Claims Administrator may check each address obtained against the United States Post Office National Change of Address Database;

The Claims Administrator may conduct a reasonable search to locate an updated address for any potential Settlement Class Member whose notice is returned as undeliverable;

The Claims Administrator will update addresses based on any forwarding information received from the United States Post Office; and

The Claims Administrator will update addresses based on any requests received from Settlement Class Members.

- 7.4. The Claims Administrator will provide weekly updates to Class Counsel and counsel for Defendant regarding the status of its administration.
- 7.5. Not later than thirty days following the Preliminary Approval Date, the Claims Administrator will mail the Class Notice and a Claim Form to potential Settlement Class Members, where possible;
- 7.6. The postcard the Claims Administrator uses to mail the Class Notice and Claim Form to potential Settlement Class Members must include a notation requesting address correction.
- 7.7. If any Class Notice is returned with a new address, the Claims Administrator must resend the Class Notice and a Claim Form to the new address.
- 7.8. Defendant will be entitled to an offset for any payments it makes under this Agreement prior to the date on which the non-reversionary Settlement Fund is established and funded, from the non-reversionary Settlement Fund once it is established and funded.
- 7.9. The parties will not make statements of any kind to any third party regarding the Settlement prior to the filing of a motion for preliminary approval with the Court, with the exception of potential claims administrators. The parties may make public statements to the Court as necessary to obtain preliminary or final approval of the Settlement, and Class Counsel will not be prohibited from communicating with any Settlement Class Member regarding the Lawsuit or the Settlement.

8. Publication of Class Notice:

- 8.1. Not later than thirty days following the Preliminary Approval Date, the Claims Administrator will arrange for publication of the Class Notice on the dedicated Settlement Website.

9. Settlement Website:

- 9.1. Not later than thirty days following the Preliminary Approval Date, the Claims Administrator will build and maintain a dedicated website that includes downloadable information and documents necessary to submit claims.
- 9.2. At a minimum, the downloadable information and documents must include, when available, this Agreement, the Class Notice, a Claim Form, Plaintiff's petition for attorneys' fees, costs, litigation expenses, and a service award, the Order Preliminarily Approving the Settlement, Plaintiff's class action complaint, and the Final Order and Judgment.

9.3. The Settlement Website domain will be www.CeterisTCPAsettlement.com.

10. Final Approval:

- 10.1. At least fourteen days prior to the Fairness Hearing, the Class Administrator will provide a sworn declaration attesting to proper service of the Class Notice and Claim Forms, and state the number of claims, objections, and opt outs, if any.
- 10.2. Prior to the Fairness Hearing, Plaintiff will file an unopposed motion to finally approve the Settlement.
- 10.3. Neither Plaintiff nor Defendant will take any action inconsistent with Plaintiff's motion to finally approve the Settlement.

11. Consideration:

- 11.1. Subject to paragraph 4.3, Defendant will create the non-reversionary Settlement Fund in the amount of \$761,850.00 to compensate members of the Settlement Class. The Settlement Fund will be held by the Claims Administrator.
 - 11.1.1. Within ten days of the Court's issuance of the Order Preliminarily Approving the Settlement, Defendant will make a payment of Twenty-Five Thousand Dollars (\$25,000.00);
 - 11.1.2. Within seventy days of the Court's issuance of the Order Preliminarily Approving the Settlement, Defendant will make a payment of Twenty-Five Thousand Dollars (\$25,000.00); and
 - 11.1.3. Within ten days of the Court's issuance of the Final Order and Judgment, Defendant will make a payment of Seven Hundred Eleven Thousand Eight Hundred Fifty Dollars (\$711,850.00).
- 11.2. Paid from the Settlement Fund will be:

Compensation to Settlement Class Members who timely submit a valid Claim Form, calculated on a *pro-rata* basis;

All costs, fees and any other charges invoiced by the Claims Administrator, including the cost of notice to potential Settlement Class Members, and claims administration for the Settlement Class;

Litigation costs and expenses associated with the Settlement Class, for which Class Counsel will petition the Court;

Reasonable attorneys' fees, calculated as a percentage of the Settlement Fund, for which Class Counsel will petition the Court;

A service award to Plaintiff, for which Plaintiff will petition the Court.

- 11.3. Each Settlement Class Member who submits a valid, Approved Claim Form, which provides his or her name, address, and telephone number, either online no later than seventy-five days after the Preliminary Approval Date, or by U.S. Mail with a postmark of no later than seventy-five days after the Preliminary Approval Date, will be entitled to a *pro rata* share of the non-reversionary Settlement Fund after deducting:

Costs and expenses of administrating the Settlement;

Class Counsel's attorneys' fees, subject to the Court's approval;

Class Counsel's costs and litigation expenses not to exceed \$9,500.00, subject to the Court's approval; and

Plaintiff's service award, not to exceed \$5,000.00, subject to the Court's approval.

- 11.4. A Settlement Class Member may submit only one claim, regardless of how many ringless voice messages Defendant delivered to the Settlement Class Member.
- 11.5. Each settlement check issued to a Settlement Class Member will be negotiable for one-hundred-twenty days after it is issued.
- 11.6. Any funds not ultimately paid out as the result of uncashed settlement checks will be paid out as a *cy pres* award to Indiana Legal Services, Inc., subject to the Court's approval.

12. Opt-Outs:

- 12.1. Any Settlement Class Member who wishes to exclude himself or herself from the Settlement must mail a written request for exclusion to the Class Administrator, postmarked no more than seventy-five days after the Preliminary Approval Date.
- 12.2. Through his or her request for exclusion, and subject to the Court's approval, a member of the Settlement Class must include his or her:

Full name;

Address;

Telephone number called by Defendant; and

A statement that he or she wishes to be excluded from the Settlement.

- 12.3. Any Settlement Class Member who submits a valid and timely request for exclusion will neither be bound by the terms of this Agreement, nor receive any of the benefits of the Settlement.
- 12.4. The Claims Administrator will provide a list of the names of each Settlement Class Member who submitted a valid and timely request for exclusion to Class Counsel and counsel for Defendant within ten days after the deadline for exclusions.
- 12.5. Settlement Class Members may opt out on an individual basis only.
- 12.6. “Mass” or “class” opt-outs submitted by third parties on behalf of a “mass” or “class” of Settlement Class Members are not allowed.

13. Objections:

- 13.1. Any Settlement Class Member who wishes to object to the Settlement must mail a written notice of objection to the Class Administrator, Class Counsel, counsel for Defendant, and to the Court, postmarked no more than seventy-five days after the Preliminary Approval Date.
- 13.2. Through his or her notice of objection, and subject to the Court’s approval, a Settlement Class Member must include his or her:
 - Full name;
 - Address;
 - Telephone number to which Defendant delivered a ringless voice message or a voice mail box direct drop to demonstrate that the objector is a member of the Settlement Class;
 - A statement of the objection;
 - A description of the facts underlying the objection;
 - A description of the legal authorities that support each objection; and
 - A statement noting whether the objector intends to appear at the Fairness Hearing;
- 13.3. Settlement Class Members who do not submit a valid and timely objection will be barred from seeking review of the Settlement by appeal, or otherwise.
- 13.4. If a Settlement Class Member submits both an objection and an exclusion, he or she will be considered to have submitted an exclusion (and not an objection).

14. Release:

- 14.1. Upon the Court's entry of the Final Order and Judgment, Releasors will release and forever discharge the Released Parties from the Released Claims.
- 14.2. Plaintiff and Releasors agree and covenant, and each Releasor will be deemed to have agreed and covenanted, not to sue any Released Party with respect to any of the Released Claims, and agree to be forever barred from doing so, in any court of law, equity, or any other forum.

15. Exclusive Remedy:

- 15.1. The relief included in this Agreement is the exclusive remedy of recovery for the Released Claims.

16. Attorneys' Fees, Costs, Expenses, and Service Award:

- 16.1. Class Counsel will submit to the Court a request for attorneys' fees to be paid from the Settlement Fund.
- 16.2. Class Counsel will submit to the Court a request for reimbursement of reasonable litigation costs and expenses not to exceed \$9,500.00 to be paid from the Settlement Fund.
- 16.3. Plaintiff will submit to the Court a request for a service award not to exceed \$5,000.00 to be paid from the Settlement Fund.
- 16.4. The Court's order regarding Class Counsel's request for attorneys' fees, costs, and expenses, and Plaintiff's request for a service award, will not affect the finality of the Settlement.
- 16.5. In the event that the Court declines Class Counsel's request for attorneys' fees, costs, and expenses, or Plaintiff's request for a service award, or awards less than the amounts sought, the Settlement will continue to be effective and enforceable by the parties.

17. No Admission of Liability:

- 17.1. This Agreement does not constitute an admission by Defendant that Plaintiff's claims or allegations are true or correct.

18. Representations and Warranty:

- 18.1. Class Counsel believes that the Settlement is in the best interests of the Settlement Class Members.

- 18.2. Plaintiff warrants that on the date this Agreement is executed, he owns the claims that he asserts in connection with this matter, and that he has not assigned, pledged, sold or otherwise transferred his claims (or an interest in such claims), and that on the Finality Date he will own his claims free and clear of any and all liens, claims, charges, security interests or other encumbrances of any nature whatsoever, except for any contingent legal fees and expenses.

19. Appeals:

- 19.1. If a Settlement Class Member appeals the Final Order and Judgment, Plaintiff and Defendant agree to support the Settlement on appeal.
- 19.2. Nothing contained in this Agreement is intended to preclude Plaintiff, Defendant, or Class Counsel, from appealing any order inconsistent with this Agreement.

20. Distribution of the Settlement Fund:

- 20.1. Within forty-five days of the Finality Date, the Claims Administrator will mail a settlement check to each Settlement Class Member who submitted a valid, Approved Claim Form.
- 20.2. Within five days of the Finality Date, the Claims Administrator will pay to Plaintiff from the Settlement Fund the service award approved by the Court.
- 20.3. Within five days of the Finality Date, the Claims Administrator will pay to Class Counsel from the Settlement Fund the attorneys' fees, costs, and litigation expenses approved by the Court.
- 20.4. If any money remains in the non-reversionary Settlement Fund after the date that all initial settlement checks are voided due to non-deposit (*i.e.* checks that Settlement Class Members do not cash), and if the amount that remains is sufficient to issue second checks of at least \$5.00 to each Settlement Class Member who cashed an initial settlement check after accounting for the associated expenses of such a distribution, the Claims Administrator will mail a second settlement check, calculated on a *pro rata* basis considering the remaining amount of the non-reversionary Settlement Fund, to each Settlement Class Member who cashed an initial settlement check.
- 20.5. If any money remains in the non-reversionary Settlement Fund after the date that all settlement checks (*i.e.*, initial settlement checks, and if applicable, second settlement checks), are voided due to non-deposit (*i.e.*, checks that Settlement Class Members do not cash), this amount will be paid as a *cy pres* award to Indiana Legal Services, Inc., subject to the Court's approval.

21. Taxes:

- 21.1. Plaintiff and Defendant agree that the account into which the non-reversionary common funds are deposited is intended to be and will at all times constitute a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. The Claims Administrator will timely make elections as necessary or advisable to carry out required duties including, if necessary, the “relation back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. These elections will be made in compliance with the procedures and requirements contained in applicable Treasury Regulations promulgated under Section 1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). It is the responsibility of the Claims Administrator to cause the timely and proper preparation and delivery of the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.
- 21.2. For the purpose of Section 468B of the Code and the Treasury Regulations thereunder, the Claims Administrator will be designated as the “administrator” of the non-reversionary common funds. The Claims Administrator will cause to be timely and properly filed all informational and other tax returns necessary or advisable with respect to the non-reversionary common funds (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). These returns will reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the non-reversionary common funds are to be paid out of the non-reversionary common funds.
- 21.3. All taxes arising in connection with income earned by the non-reversionary common funds, including any taxes or tax detriments that may be imposed upon Defendant with respect to any income earned by the non-reversionary common funds for any period during which the non-reversionary common funds do not qualify as a “qualified settlement fund” for federal or state income tax purposes will be paid by the Claims Administrator from the non-reversionary common funds.
- 21.4. Any person or entity that receives a distribution from the non-reversionary common funds will be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. These taxes and tax-related expenses will not be paid from the non-reversionary common funds.

22. Stay:

- 22.1. Plaintiff and Defendant stipulate that all proceedings in connection with this matter will be stayed until the Court issues its decision regarding final approval of the Settlement.
- 22.2. The stipulated stay of proceedings will not prevent the filing of any motions, declarations, and other matters necessary to obtain and preserve preliminary and final approval of the Settlement.

23. Miscellaneous Provisions:

- 23.1. This Agreement is the entire agreement between Plaintiff and Defendant. All antecedent and contemporaneous extrinsic representations, warranties, or collateral provisions concerning the negotiation and preparation of this Agreement are intended to be discharged and nullified.
- 23.2. Neither Plaintiff nor Defendant may modify this Agreement, except by a writing that Plaintiff and Defendant execute and that the Court approves.
- 23.3. All notices required by this Agreement, between Plaintiff, Defendant, Class Counsel, and counsel for Defendant, must be sent by first class U.S. mail, by hand delivery, or by electronic mail, to:

Michael L. Greenwald
Greenwald Davidson Radbil PLLC
5550 Glades Road, Suite 500
Boca Raton, Florida 33431
mgreenwald@gdrllawfirm.com

(counsel for Plaintiff and the Settlement Class)

Richard C. Perr
Kaufman Dolowich Voluck
Four Penn Center,
1600 JFK Boulevard, Suite 1030
Philadelphia, Pennsylvania 19103
rperr@kdvlaw.com

(counsel for Defendant)

- 23.4. Section headings in this Agreement are for convenience and reference only, and are not to be taken to be a part of the provisions of this Agreement, and do not control or affect meanings, constructions or the provisions of this Agreement.
- 23.5. Plaintiff and Defendant will exercise their best efforts, take all steps, and expend all efforts that may become necessary to effectuate this Agreement.
- 23.6. Plaintiff and Defendant drafted this Agreement equally, and it should not be construed strictly against Plaintiff or Defendant.
- 23.7. This Agreement binds successors and assigns of the parties.
- 23.8. Plaintiff, Defendant, Class Counsel, and counsel for Defendant may sign this Agreement in counterparts, and by electronic signature, and the separate signature

pages may be combined to create a binding document, which constitutes one instrument.

24. Termination:

- 24.1. Either party has the right to unilaterally terminate this Agreement by providing written notice to the other party with ten days of any of the following occurrences:

The Court rejects or declines to preliminarily or finally approve this Agreement, after all reasonable efforts are made to obtain preliminary or final approval;

A higher court reverses the Final Order and Judgment, and this Agreement is not reinstated by the Court on remand without material change or change agreed to by the parties; or

The Finality Date does not occur.

- 24.2. Within ten days of the Court-ordered deadline for exclusions, Defendant will have the right to void the Settlement if the number of valid opt-outs meets or exceeds 250.

- 24.3. If either Plaintiff or Defendant terminates this Agreement as provided herein, the Agreement will be of no force and effect and the parties' rights and defenses will be restored, without prejudice, to their respective positions as if this Agreement had never been executed, and any orders entered by the Court in connection with this Agreement will be vacated. However, any payments made to the Claims Administrator for services rendered to the date of termination will not be refunded to Defendant.

25. Survival:

- 25.1. The Settlement will be unaffected by any subsequent change in law regarding the TCPA, its interpretation, and its application, whether from Congress, the Federal Communications Commission, the Consumer Financial Protection Bureau, any other agency, courts, or otherwise.

26. Dismissal:

- 26.1. The Final Order and Judgment submitted to the Court will include a provision dismissing this Lawsuit with prejudice.

27. Signatures:

- 27.1. Signatures appear on the following page.

John Fralish

Date


John Fralish (Apr 11, 2023 08:19 EDT)

Apr 11, 2023

Michael L. Greenwald
Counsel for Mr. Fralish and the Settlement Class

Date


Michael Greenwald (Apr 11, 2023 09:25 EDT)

Apr 11, 2023

Ceteris Portfolio Services, LLC

Date

Richard J. Perr
Counsel for Ceteris Portfolio Services, LLC

Date

John Fralish

Date

Michael L. Greenwald
Counsel for Mr. Fralish and the Settlement Class

Date

Ceteris Portfolio Services, LLC

Date

J. Garret Angelo

4/12/2023

Richard J. Perr
Counsel for Ceteris Portfolio Services, LLC

Date



April 12, 2023

EXHIBIT 1

What is this lawsuit about? John Fralish filed a class action lawsuit against Ceteris Portfolio Services, LLC (“Ceteris”), alleging that Ceteris violated the Telephone Consumer Protection Act (“TCPA”) by delivering ringless voice messages to cellular telephone numbers assigned to persons who do not have accounts in collections with it. Ceteris denies Mr. Fralish’s allegations, and denies it violated the TCPA. The court has not decided who is right or wrong. The parties have agreed to a settlement.

Why did you receive this notice? You received this notice because Ceteris’ records identified you as a potential member of the following settlement class: “All persons and entities throughout the United States (1) to whom Ceteris Portfolio Services, LLC delivered, or caused to be delivered, a voice mail box direct drop or ringless voice message, (2) between June 1, 2021 and February 1, 2023, (3) to a cellular telephone number Ceteris Portfolio Services, LLC designated with an internal ‘wrong number’ designation at some point during the account history.”

What does the settlement provide? Ceteris will establish a settlement fund of \$761,850.00. Out of the settlement fund will be paid: (1) settlement compensation to participating settlement class members; (2) an award of attorneys’ fees not to exceed one-third of the total settlement fund, subject to the court’s approval; (3) litigation costs and expenses incurred by class counsel in litigating this matter not to exceed \$9,500, subject to the court’s approval; (4) costs of notice and administration; and (5) a service award to Mr. Fralish not to exceed \$5,000, subject to the court’s approval. It is estimated that each valid claimant will receive between \$300 and \$900, depending on the number of settlement class members who participate.

What are your legal rights and options? If you fall within the settlement class, you have four options. First, you may timely complete and return the claim form found on the backside of this postcard, or timely submit a claim online at www.CeterisTCPASettlement.com, by [date], 2023, in which case you will receive a proportionate share of the settlement fund after deducting attorneys’ fees, costs, and expenses, and will release certain claims you may have against Ceteris. Second, you may do nothing, in which case you will not receive a share of the settlement fund, but you will release certain claims you may have against Ceteris. Third, you may exclude yourself from the settlement, in which case you will neither receive a share of the settlement fund, nor release any claims you may have against Ceteris. Or fourth, you may object to the settlement. To obtain additional information about your legal rights and options, visit www.CeterisTCPASettlement.com, or contact the settlement administrator by writing to Fralish v. Ceteris Portfolio Services, LLC Settlement Administrator, [address].

When is the final fairness hearing? The court will hold a final fairness hearing on [month] [day], 2023, at [time] CT. The hearing will take place via Zoom. At the final fairness hearing, the court will consider whether the settlement is fair, reasonable, and adequate and, if so, whether final approval of the settlement should be granted. The court will also hear objections to the settlement, if any. The court may make a decision at that time, postpone a decision, or continue the hearing.

Front Inside

This is a notice of a settlement of a class action lawsuit. This is not a notice of a lawsuit against you.

If you received a ringless voice message on your cellular telephone from Ceteris Portfolio Services, LLC between June 1, 2021 and February 1, 2023, you may be entitled to compensation as a result of the settlement in the class action lawsuit captioned:

Fralish v. Ceteris Portfolio Services, LLC,
No. 3:22-cv-176-DRL (N.D. Ind.)

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

Please read this notice carefully. It summarily explains your rights and options to participate in a class action settlement.

Fralish v. Ceteris Portfolio Services, LLC
c/o KCC
[Address]

Permit
Info here

Bar Code To Be Placed Here

Postal Service: Please do not mark Barcode

ADDRESS SERVICE REQUESTED

CLAIM ID: << ID>>
<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip>>

Front Outside

Carefully separate at perforation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

John Fralish v. Ceteris Portfolio Services, LLC,
Case No. 3:22-cv-00176-DRL-MGG (N.D. Indiana)

CLAIM FORM

[admin] ID: «[Admin] ID»
«First Name» «Last Name»
«Address1»
«City», «State» «Zip»

Name/Address Changes:

I received one or more ringless voice messages or voice mail box direct drops (a prerecorded message left on voicemail without the telephone ringing) from Ceteris Portfolio Services, LLC on my cellular telephone between June 1, 2021 and February 1, 2023. I did not have an account in collections with Ceteris Portfolio Services, LLC and I wish to participate in this settlement.

**IF YOU MOVE, send your CHANGE OF ADDRESS to the
Settlement Administrator at the address on the backside of this form.**

Signature: _____

Telephone number on which I received the message(s):

Date of signature: _____

**To receive a payment you must enter all requested information above, sign
and mail this claim form, postmarked on or before [Month] [day], 2023.**

Or you may submit a claim through the settlement website, www.CeterisTCPASettlement.com.

**To exclude yourself from the class action settlement you must mail a written request for
exclusion to the Claims Administrator, postmarked on or before [Month] [day], 2023.**

Your request must include the information required by the Court's [month] [day], 2023 Order.

Bottom Inside

Please Affix
Postage Here

Bar Code To Be Placed Here

Postal Service: Please do not mark Barcode

Bottom Outside

**Fralish v. Ceteris Portfolio Services, LLC Administrator
c/o KCC
[address]**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

John Fralish, <i>on behalf of himself and</i>)	CASE NO. 3:22-cv-176-DRL-MGG
<i>others similarly situated,</i>)	
)	
Plaintiff,)	
)	
v.)	
)	
Ceteris Portfolio Services, LLC,)	
)	
Defendant.)	
_____)	

WEBSITE Q & A NOTICE

**This is a notice of a settlement of a class action lawsuit.
This is not a notice of a lawsuit against you.**

If you received a ringless voice message or a voice mail box direct drop on your cellular telephone from Ceteris Portfolio Services, LLC (“Ceteris”), between June 1, 2021 and February 1, 2023, and you did not have an account in collections with Ceteris, you may be entitled to compensation as a result of the settlement in the class action lawsuit captioned:

John Fralish v. Ceteris Portfolio Services, LLC, No. 3:22-cv-00176-DRL-MGG (N.D. Indiana)

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

**Please read this notice carefully.
It explains your rights and options to participate in a class action settlement.**

What are your legal rights and options?

SUBMIT A TIMELY CLAIM FORM:	If you are a class member and you submit a timely, valid claim form you will receive a proportionate share of the \$761,850 settlement fund after expenses are deducted, and you will release claims you may have against Ceteris related to this case. It is estimated that each claimant will receive between \$300 and \$900.
DO NOTHING:	If you are a class member and you do nothing, you will <u>not</u> receive a share of the settlement fund, but you will release claims you may have against Ceteris related to this case.
EXCLUDE YOURSELF:	If you are a class member and you exclude yourself from the settlement, you will <u>not</u> receive a share of the settlement fund, and you will <u>not</u> release any claims you have against Ceteris.
OBJECT:	If you are a class member, you may object to the settlement.

Why is this notice available?

This is a notice of a proposed settlement in a class action lawsuit. The settlement would resolve the lawsuit John Fralish filed against Ceteris. Please read this notice carefully. It explains the lawsuit, the settlement, and your legal rights, including the process for receiving a settlement check, excluding yourself from the settlement, or objecting to the settlement.

What is this lawsuit about?

Mr. Fralish filed a class action lawsuit against Ceteris, alleging that it violated the Telephone Consumer Protection Act (“TCPA”) by delivering ringless voice messages, or voice mail box direct drops, to cellular telephone numbers assigned to persons who do not have accounts in collections with Ceteris. A ringless voice message, or voice mail box direct drop, is a prerecorded message left on a voicemail without the telephone ringing. In other words, Mr. Fralish filed a lawsuit against Ceteris, alleging that Ceteris violated the TCPA by delivering voice messages to wrong cellular telephone numbers—in that the subscriber to the telephone number was different from the party that Ceteris was trying to reach. Ceteris denies the allegations. The parties have agreed to a settlement.

Why is this a class action?

In a class action, one or more people called “class representatives” file a lawsuit on behalf of people who have similar claims. All of these people together are a “class” or “class members.”

The Court accordingly resolves claims for all class members, except for those who exclude themselves from the class.

Why is there a settlement?

Mr. Fralish, on the one hand, and Ceteris, on the other, have agreed to settle the lawsuit to avoid the time, risk, and expense associated with it, and to achieve a final resolution of the disputed claims. Under the settlement, class members will obtain a payment in settlement of the claims that Mr. Fralish raised in the lawsuit. Mr. Fralish and his attorneys think the settlement is best for all class members.

How do you know if your claims are included in the settlement?

This settlement resolves claims on behalf of the following class:

All persons and entities throughout the United States (1) to whom Ceteris Portfolio Services, LLC delivered, or caused to be delivered, a voice mail box direct drop or ringless voice message, (2) between June 1, 2021 and February 1, 2023, (3) to a cellular telephone number Ceteris Portfolio Services, LLC designated with an internal “wrong number” designation at some point during the account history.

Ceteris has identified 8,465 unique cellular telephone numbers with a “wrong number” designation in its records and to which it delivered, or attempted to deliver, a voice mail box direct drop or ringless voice message between June 1, 2021 and February 1, 2023.

What does the settlement provide?

Ceteris will establish a settlement fund in the amount of \$761,850.00. Out of the settlement fund, Ceteris will pay:

- a. Settlement compensation to the class members;
- b. The costs and expenses of administering the class action settlement;
- c. An award of attorneys’ fees, subject to the Court’s approval;
- d. Costs and expenses incurred litigating this matter, subject to the Court’s approval; and
- e. A service award to Mr. Fralish, subject to the Court’s approval.

Each class member who submits a timely and valid claim form will be entitled, subject to the provisions of the settlement agreement, to his or her equal share of the settlement fund as it exists after deducting:

- a. Costs and expenses of administering the class action settlement, which will not exceed \$65,000;

b. Attorneys' fees in an amount not to exceed one-third of the total settlement fund, or 36% of the net settlement fund after deducting costs and expenses and a service award, subject to the Court's approval;

c. Costs and litigation expenses not to exceed \$9,500, subject to the Court's approval; and

d. A service award for Mr. Fralish, not to exceed \$5,000, subject to the Court's approval.

How can you get a payment?

You must mail a valid claim form to the *Fralish v. Ceteris* Settlement Administrator, c/o KCC, [address], postmarked by **[date], 2023**. Or you must submit a valid claim through www.CeterisTCPASettlement.com by the same date.

When will you be paid?

If the Court grants final approval of the settlement, settlement checks will be mailed to class members who timely mailed or submitted valid claim forms no later than 45 days after the judgment in the lawsuit becomes final. If there is an appeal of the settlement, payment may be delayed.

What rights are you giving up in this settlement?

Unless you exclude yourself from the settlement, and if you meet the class definition, you will be considered a member of the class, which means you give up your right to sue or continue a lawsuit against Ceteris over the released claims. Giving up your legal claims is called a release. Unless you formally exclude yourself from the settlement, you will release your claims against Ceteris.

For more information on the release, released parties, and released claims, you may obtain a copy of the class action settlement agreement from the Clerk of the United States District Court for the Northern District of Indiana, or on the settlement website, www.CeterisTCPASettlement.com.

How can you exclude yourself from the settlement?

You may exclude yourself from the settlement, in which case you will not receive a payment. If you wish to exclude yourself from the settlement, you must mail a written request for exclusion to the claims administrator, at the addresses set forth below, postmarked by **[date], 2023**. You must include in your request for exclusion you:

- a. Full name;
- b. Address;

c. Cellular telephone number called by Ceteris demonstrating that you are a member of the Class; and

d. A clear and unambiguous statement that you wish to be excluded from the settlement, such as “I request to be excluded from the settlement in the *Fralish v. Ceteris* action.”

You must sign the request personally. If any person signs on your behalf, that person must attach a copy of the power of attorney authorizing that signature.

When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing on **[date]**, at **[time]**. The hearing will take place **virtually**. At the fairness hearing, the Court will consider whether the settlement is fair, reasonable, and adequate and, if so, whether final approval of the settlement should be granted. The Court will hear objections to the settlement, if any. The Court may make a decision at that time, postpone a decision, or continue the hearing.

Do you have to attend the hearing?

No. You are not required to attend the hearing. But you are welcome to attend the hearing at your own expense. You cannot speak at the hearing if you have excluded yourself from the class settlement. Once you have excluded yourself, the class settlement does not affect your legal rights.

What if you want to object to the settlement?

If you do not exclude yourself from the settlement, you can object to the settlement if you do not believe it is fair, reasonable, and adequate. If you wish to object, you must mail a written notice of objection, postmarked by **[date], 2023**, to class counsel, Ceteris’s attorneys, and to the Court, at the following addresses:

<u>Class Counsel:</u>	<u>Defendant’s Counsel:</u>	<u>Court:</u>
Michael L. Greenwald	Richard C. Perr	U.S. District Court for the
Greenwald Davidson Radbil	Kaufman Dolowich Voluck	Northern District of Indiana
PLLC	Four Penn Center,	102 Federal Building
5550 Glades Rd., Suite 500	1600 JFK Blvd., Suite 1030	204 S. Main Street
Boca Raton, FL 33431	Philadelphia, PA 19103	South Bend, IN 46601

You must include in your objection your:

- a. Full name;
- b. Address;
- c. Cellular telephone number to which Ceteris delivered a ringless voice message or a voice mail box direct drop to demonstrate that you are a member of the Settlement Class;

- d. A statement of the specific objection(s);
 - e. A description of the facts underlying the objection;
 - f. A description of the legal authorities that support each objection;
- and
- g. A statement noting whether you intend to appear at the fairness hearing.

By when must you enter an appearance?

Any class member who objects to the settlement and wishes to enter an appearance must do so by **[date], 2023**. To enter an appearance, you must file with the Clerk of the Court a written notice of your appearance and you must serve a copy of that notice, by U.S. mail or hand-delivery, upon class counsel and Ceteris's attorneys, at the addresses set forth below.

What if you do nothing?

If you do nothing and the Court approves the settlement agreement, you will not receive a share of the settlement fund, but you will release any claim you have against Ceteris related to the allegations in this case. Unless you exclude yourself from the settlement, you will not be able to sue or continue a lawsuit against Ceteris over the released claims.

What will happen if the Court does not approve the settlement?

If the Court does not finally approve the settlement or if it finally approves the settlement and the approval is reversed on appeal, or if the settlement does not become final for some other reason, you will receive no benefits and the lawsuit will continue.

Who are Mr. Fralish's attorneys?

Mr. Fralish's attorneys are:

Michael L. Greenwald
Greenwald Davidson Radbil PLLC
5550 Glades Road, Suite 500
Boca Raton, FL 33431

The Court has appointed Mr. Fralish's attorneys to act as class counsel. You do not have to pay class counsel. If you want to be represented by your own lawyer, and have that lawyer appear in Court for you in this case, you must hire one at your own expense.

Who are Ceteris's attorneys?

Ceteris's attorneys are:

Richard C. Perr

Graeme E. Hogan
Kaufman Dolowich Voluck
Four Penn Center,
1600 JFK Boulevard, Suite 1030
Philadelphia, PA 19103

Before what Court is this matter pending?

Mr. Fralish filed his class action lawsuit in the following Court:

United States District Court for the Northern District of Indiana
102 Federal Building
204 S. Main Street
South Bend, IN 46601

Where can you get additional information?

This notice is only a summary of the settlement. All documents filed with the Court, including the full class action settlement agreement, may be reviewed or copied at the United States District Court for the Northern District of Indiana. In addition, pertinent case materials, including the settlement agreement, are available at the settlement web site, **www.CeterisTCPASettlement.com**.

If you would like additional information about this matter, please contact:

Fralish v. Ceteris Settlement Administrator
c/o KCC
[Address]

Please do not call the Judge about this case. Neither the Judge, nor the Clerk of Court, will be able to give you advice about this case. Furthermore, neither Ceteris nor Ceteris's attorneys represent you, and they cannot give you legal advice.

EXHIBIT 2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

John Fralish, <i>on behalf of himself and</i>)	CASE NO. 3:22-cv-176-DRL-MGG
<i>others similarly situated,</i>)	
)	
Plaintiff,)	
)	
v.)	
)	
Ceteris Portfolio Services, LLC,)	
)	
Defendant.)	
_____)	

ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT

The Court has been advised that the parties to this action, John Fralish (“Plaintiff”), and Ceteris Portfolio Services, LLC (“Defendant”), through their respective counsel, have agreed, subject to Court approval following notice to the Settlement Class Members (defined below) and a hearing, to settle the above-captioned lawsuit upon the terms and conditions set forth in their written settlement agreement (the “Settlement Agreement”), which has been filed with the Court, and the Court deeming that the definitions set forth in the Settlement Agreement are hereby incorporated by reference herein;

NOW, THEREFORE, based upon the Settlement Agreement and all of the files, records, and proceedings herein, and it appearing to the Court that, upon preliminary examination, the proposed settlement appears fair, reasonable, and adequate, and that a hearing should and will be held on _____, 2023, after notice to the Settlement Class Members, to confirm that the proposed settlement is fair, reasonable, and adequate, and to determine whether a final order and judgment should be entered in this lawsuit:

IT IS HEREBY ORDERED:

The Court has jurisdiction over the subject matter of the action and over all settling parties hereto.

In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, and 1711-1715, Defendant will cause to be served written notice of the class settlement on the United States Attorney General and the Attorneys General of each state in which any Settlement Class Member resides.

Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, this action is preliminarily certified, for settlement purposes only, as a class action on behalf of the following class of plaintiffs (the “Settlement Class” and “Settlement Class Members”) with respect to the claims asserted in this action:

All persons and entities throughout the United States (1) to whom Ceteris Portfolio Services, LLC delivered, or caused to be delivered, a voice mail box direct drop or ringless voice message, (2) between June 1, 2021 and February 1, 2023, (3) to a cellular telephone number Ceteris Portfolio Services, LLC designated with an internal “wrong number” designation at some point during the account history.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court appoints John Fralish as the class representative.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court appoints Michael L. Greenwald of Greenwald Davidson Radbil PLLC as Class Counsel. *See, e.g., Miles v. Mediacredit, Inc.*, No. 4:20-cv-1186-JAR, 2023 WL 1794559, at *2 (E.D. Mo. Feb. 7, 2023) (appointing Greenwald Davidson Radbil PLLC as Class Counsel); *Head v. Citibank, N.A.*, 340 F.R.D. 145, 152 (D. Ariz. 2022) (same); *Chapman v. Bowman, Heintz, Boscia & Vician, P.C.*, No. 2:15-CV-120 JD, 2016 WL 3247872, at *3 (N.D. Ind. June 13, 2016) (DeGuilio, J.) (same).

The Court preliminarily finds that this action satisfies the applicable prerequisites for class action treatment in connection with a settlement under Rule 23, namely:

- A. The Settlement Class Members are so numerous and geographically dispersed that joinder of all of them is impracticable;
- B. There are questions of law and fact common to the Settlement Class Members, which predominate over any individual questions;
- C. Plaintiff's claims are typical of the claims of the Settlement Class Members;
- D. Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all of the Settlement Class Members; and
- E. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

The Court preliminarily finds that the settlement of this action, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Settlement Class Members, when considering, in their totality, the following factors: (1) the strength of the plaintiff's case compared to the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement among affected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

The Court has also considered the following factors in preliminarily finding that the settlement of this action, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Settlement Class Members:

- (A) the class representative and class counsel have adequately represented the class;

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

Fed. R. Civ. P. 23(e)(2).

A third-party class administrator acceptable to the parties will administer the settlement and notification to Settlement Class Members. The class administrator will be responsible for mailing the approved class action notice and settlement checks to the Settlement Class Members who can be identified through reasonable efforts. All costs of administration will be paid out of the Settlement Fund. Upon the recommendation of the parties, the Court hereby appoints the following class administrator: KCC Class Action Services, LLC. *See Bonoan v. Adobe, Inc.*, No. 19-1068, 2020 WL 6018934, at *2 (N.D. Cal. Oct. 9, 2020) (approving KCC as class administrator in TCPA class action)

The Court approves the form and substance of the postcard notice, claim form, and Question & Answer Notice, which are attached as exhibits to the Settlement Agreement. The proposed form and method for notifying the Settlement Class Members of the settlement and its terms and conditions meet the requirements of Rule 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all

persons and entities entitled to the notice. The Court finds that the proposed notice plan is clearly designed to advise the Settlement Class Members of their rights.

In accordance with the Settlement Agreement, the class administrator will cause the postcard notice to be mailed to the Settlement Class Members as expeditiously as possible, but in no event later than 30 days after the Court's entry of this order, *i.e.*, **no later than** _____, **2023**. The class administrator will confirm, and if necessary, update the addresses for the Settlement Class Members through a standard methodology that the class administrator uses to update addresses. In addition, the Question & Answer Notice, and relevant pleadings, will be made available to Settlement Class Members through a dedicated website. *See Bonoan*, 2020 WL 6018934, at *2 (“This Court approves the form and substance of the proposed notice of the class action settlement, which includes postcard notice, publication notice, a physical claim form, and the question-and-answer notice and online claim form, which will appear on the dedicated settlement website. To reach potential class members, KCC will perform reverse look-ups of available telephone numbers to identify persons who will receive direct mail notice. KCC will utilize established third-party vendors to obtain contact information for potential class members in a manner consistent with industry standard in wrong number TCPA class actions.”).

Any Settlement Class Member who desires to be excluded from the class must send a written request for exclusion to the class administrator with a postmark date no later than 75 days after the Court's entry of this order, *i.e.*, **no later than** _____, **2023**. To be effective, the written request for exclusion must state the Settlement Class Member's full name, address, and telephone number, along with a statement that the Settlement Class Member wishes to be excluded, and must be signed by the Settlement Class Member. Any Settlement Class

Member who submits a valid and timely request for exclusion will not be bound by the terms of the Settlement Agreement.

Any Settlement Class Member who intends to object to the fairness of this settlement must file a written objection with the Court within 75 days after the Court's entry of this order, *i.e.*, **no later than _____, 2023**. Further, any such Settlement Class Member must, within the same time period, provide a copy of the written objection to Class Counsel, Attention: Michael L. Greenwald, Greenwald Davidson Radbil PLLC, 5550 Glades Road, Suite 500, Boca Raton, FL 33431; and to Counsel for Defendant, Attention: Richard C. Perr, Kaufman Dolowich Voluck, Four Penn Center, 1600 JFK Boulevard, Suite 1030, Philadelphia, PA 19103.

To be effective, a notice of intent to object to the proposed settlement must:

- A. Contain a heading which includes the name of the case and case number;
- B. Provide the name, address, telephone number and signature of the Settlement Class Member filing the objection;
- C. Attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Settlement Class Member, including providing the cellular telephone number to which Defendant delivered a ringless voice message or a voice mail direct drop;
- D. Be sent to Class Counsel and counsel for Defendant at the addresses above by first-class mail, postmarked no later than 75 days after the Court preliminarily approves the settlement;
- E. Be filed with the Clerk of the Court no later than 75 days after the Court preliminarily approves the settlement;

F. Contain the name, address, bar number and telephone number of the objecting Settlement Class Member's counsel, if represented by an attorney. If the Settlement Class Member is represented by an attorney, he/she must comply with all applicable laws and rules for filing pleadings and documents in the U.S. District Court for the Northern District of Indiana; and

G. State the grounds for objection, as well as identify any documents which such objector desires the Court to consider.

Any Settlement Class Member who has timely filed an objection may appear at the settlement approval hearing, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the proposed settlement, and on the application for an award of attorneys' fees, costs, and expenses. The right to object to the proposed settlement must be exercised individually by an individual Settlement Class Member, not as a member of a group or subclass and not by the act of another person acting or purporting to act in a representative capacity. Any objection that includes a request for exclusion will be treated as an exclusion. And any Settlement Class Member who submits both an exclusion and an objection will be treated as having excluded himself or herself from the settlement, and will have no standing to object.

The Court orders that any Settlement Class Member who does not submit a timely, written request for exclusion from the Settlement Class (*i.e.*, becomes an Opt-Out) will be bound by all proceedings, orders and judgments in this litigation, even if such member of the Settlement Class has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Settlement Agreement release.

The class administrator will mail a settlement check to each Settlement Class Member who submits a timely, valid claim form and does not exclude himself or herself from the Settlement Class. The settlement checks to the Settlement Class Members must be sent via U.S. mail no later than 45 days after the judgment in this case becomes final.

John Fralish may petition the Court to receive an amount not to exceed \$5,000 as acknowledgement of his role in prosecuting this case on behalf of the Settlement Class Members.

Pending determination of whether final approval of the Settlement Agreement should be granted, the Court enjoins Plaintiff and all members of the Settlement Class unless and until they have timely excluded themselves from (a) filing, commencing, prosecuting, intervening in or participating as a plaintiff, claimant or class member in any other lawsuit, arbitration or other proceeding against Defendant in any jurisdiction based on the Released Claims, (b) filing, commencing or prosecuting a lawsuit, arbitration or other proceeding against Defendant as a class action on behalf of any members of the Settlement Class who have not timely excluded themselves (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on the Released Claims, and (c) attempting to effect Opt Outs of a class of individuals in any lawsuit or arbitration proceeding against Defendant based on the Released Claims, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency.

The Court will conduct a hearing (the “Fairness Hearing”) on _____, **2023** to be conducted by remote means, to review and rule upon the following issues:

- A. Whether this action satisfies the applicable requirements for class action treatment for settlement purposes under Rule 23;

B. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the Settlement Class Members and should be approved by the Court;

C. Whether the final order and judgment, as provided under the Settlement Agreement, should be entered, dismissing this action with prejudice and releasing the Released Claims against the Released Parties; and

D. To discuss and review other issues as the Court deems appropriate.

Attendance at the Fairness Hearing is not necessary. Settlement Class Members need not appear at the hearing or take any other action to indicate their approval of the proposed class action settlement. Settlement Class Members wishing to be heard are, however, required to appear at the Fairness Hearing. The Fairness Hearing may be postponed, adjourned, transferred, or continued without further notice to Settlement Class Members.

Memoranda in support of the proposed settlement must be filed with this Court no later than thirty days before the Fairness Hearing, *i.e.*, **no later** _____, **2023**. Opposition briefs to any of the foregoing must be filed no later than fourteen days before the Fairness Hearing, *i.e.*, **no later than** _____, **2023**. Reply memoranda in support of the foregoing must be filed with this Court no later than seven days before the Fairness Hearing, *i.e.*, **no later than** _____, **2023**.

Memoranda in support of any petitions for attorneys' fees and reimbursement of costs and litigation expenses by Class Counsel, or in support of a service award, must be filed with this Court no later than thirty-five days before the deadline for Settlement Class Members to object to, or exclude themselves from, the settlement (or forty days after this Court's entry of this Order), *i.e.*, **no later than** _____, **2023**. Opposition briefs to any of the foregoing must be

filed no later than 75 days after entry of this Order, *i.e.*, **no later than** _____, **2023**. Reply memoranda in support of the foregoing must be filed with this Court no later than fourteen days after the deadline for Settlement Class Members to object to, or exclude themselves from, the settlement, *i.e.*, **no later than** _____, **2023**. The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Settlement Agreement.

The Court sets the following schedule:

<u>Date</u>	<u>Event</u>
	Preliminary Approval Order Entered
	Notice Sent (30 days after entry of Preliminary Approval Order)
	Attorneys' Fees Petition Filed, and Request for a Service Award (40 days after entry of Preliminary Approval Order)
	Deadline to Submit Claims, Send Exclusion, File Objection, or respond in opposition to Attorneys' Fees Petition and Request for a Service Award (75 days after entry of Preliminary Approval Order)
	Deadline for reply in support of Attorneys' Fees Petition and Request for a Service Award (89 days after entry of Preliminary Approval Order)
	Motion for Final Approval Filed (at least 30 days prior to Fairness Hearing)
	Opposition to Motion for Final Approval (at least 14 days prior to Fairness Hearing)
	Reply in Support of Motion for Final Approval Filed (at least 7 days prior to Fairness Hearing)
	Fairness Hearing Held (at least 30 days after entry of Deadline to Submit Claims, Send Exclusion or File Objection)

IT IS SO ORDERED.

Dated: _____, 2023.

The Honorable Damon R. Leichty
United States District Court Judge

EXHIBIT 3

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

John Fralish, <i>on behalf of himself and</i>)	CASE NO. 3:22-cv-176-DRL-MGG
<i>others similarly situated,</i>)	
)	
Plaintiff,)	
)	
v.)	
)	
Ceteris Portfolio Services, LLC,)	
)	
Defendant.)	
_____)	

FINAL ORDER AND JUDGMENT

On March 7, 2022, John Fralish (“Plaintiff”) filed a class action complaint (hereinafter referred to as the “Lawsuit”) against Ceteris Portfolio Services, LLC (“Defendant”) in the United States District Court for the Northern District of Indiana, Case No. 3:22-cv-176-DRL-MGG, asserting class claims under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.*

Defendant has denied any and all liability alleged in the Lawsuit.

On April __, 2023, after appropriate arms-length negotiations and as the result of private mediation before the Hon. Diane M. Welsh (Ret.), Plaintiff and Defendant (the “Parties”) entered into a written settlement agreement (the “Settlement Agreement”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure.

On April __, 2023, Plaintiff filed the Settlement Agreement, along with his Unopposed Motion for Preliminary Approval of Class Action Settlement (the “Preliminary Approval Motion”).

In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(D), 1453, and 1711-1715, Defendant served written notice of the proposed class settlement as directed.

On _____, 2023, upon consideration of Plaintiff's Preliminary Approval Motion and the record, the Court entered an Order of Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order"). Pursuant to the Preliminary Approval Order, the Court, among other things, (i) preliminarily certified (for settlement purposes only) a class of plaintiffs (the "Settlement Class Members") with respect to the claims asserted in the Lawsuit; (ii) preliminarily approved the proposed settlement; (iii) appointed John Fralish as the class representative; (iv) appointed Greenwald Davidson Radbil PLLC as Class Counsel; and (v) set the date and time of the Fairness Hearing.

On _____, 2023, Plaintiff filed his Unopposed Motion for Final Approval of Class Action Settlement (the "Final Approval Motion").

On _____, 2023, this Court held a Fairness Hearing pursuant to Rule 23 to determine whether the Settlement Class satisfies the applicable prerequisites for class action treatment and whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the Settlement Class Members and should be approved by the Court.

Plaintiff now requests final certification of the Settlement Class under Fed. R. Civ. P. 23 (b)(3) and final approval of the proposed class action settlement.

The Court has read and considered the Settlement Agreement, Motion for Final Approval, and record. All capitalized terms used herein have the meanings defined herein and in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

The Court has jurisdiction over the subject matter of the Lawsuit and over all settling parties hereto.

Pursuant to Rule 23(b)(3), the Lawsuit is hereby certified, for settlement purposes only, as a class action on behalf of the following Settlement Class Members with respect to the claims asserted in the Lawsuit:

All persons and entities throughout the United States (1) to whom Ceteris Portfolio Services, LLC delivered, or caused to be delivered, a voice mail box direct drop or ringless voice message, (2) between June 1, 2021 and February 1, 2023, (3) to a cellular telephone number Ceteris Portfolio Services, LLC designated with an internal “wrong number” designation at some point during the account history.

Pursuant to Rule 23, the Court certifies Plaintiff John Fralish as the class representative and Michael L. Greenwald of Greenwald Davidson Radbil PLLC as Class Counsel.

Pursuant to the Court’s Preliminary Approval Order, the approved class action notices were mailed. The form and method for notifying the Settlement Class Members of the settlement and its terms and conditions were in conformity with this Court’s Preliminary Approval Order and satisfied the requirements of Rule 23(c)(2)(B) and due process, and constituted the best notice practicable under the circumstances. The Court finds that the notice was clearly designed to advise Class Members of their rights.

The Court finds that the Settlement Class satisfies the applicable prerequisites for class action treatment under Rule 23, namely:

- A. The Settlement Class Members are so numerous that joinder of all of them in the Lawsuit is impracticable;
- B. There are questions of law and fact common to the Settlement Class Members, which predominate over any individual questions;
- C. Plaintiff’s claims are typical of the claims of the Settlement Class Members;

- D. Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all Settlement Class Members; and
- E. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

The Court finds that the settlement of this action, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Settlement Class Members, when considering, in their totality, the following factors: (1) the strength of the plaintiff's case compared to the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement among affected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

The Court also has considered the following factors in finding that the settlement of this action, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Settlement Class Members:

- (A) the class representative and Class Counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and

- (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats Settlement Class Members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The Settlement Agreement, which is deemed incorporated herein, is finally approved and must be consummated in accordance with the terms and provisions thereof, except as amended by any order issued by this Court. The material terms of the Settlement Agreement include, but are not limited to, the following:

A. Settlement Fund - Defendant will establish a \$761,850.00 Settlement Fund (the “Settlement Fund”).

B. Deductions - The following are to be deducted from the Settlement Fund before any other distributions are made:

a. The costs and expenses for the administration of the settlement and class notice, including expenses necessary to identify potential Settlement Class Members;

b. Plaintiff’s attorneys’ fees, in the amount of \$_____, and the reimbursement of class counsel’s litigation costs and expenses, in the amount of \$_____; and

c. The Service Award to Plaintiff. John Fralish will receive \$_____ as acknowledgment of the time and effort he has spent in furtherance of his role in prosecuting this case on behalf of the Settlement Class Members, and as a result of the benefits Mr. Fralish achieved for Settlement Class Members.

C. Settlement Payment to Settlement Class Members - Each Settlement Class Member who has submitted a valid and timely claim form will receive compensation as set forth in the

Settlement Agreement. Each settlement check will be void one-hundred twenty (120) days after issuance.

The Settlement Class Members were given an opportunity to object to the settlement. ____ Settlement Class Members objected to the settlement.

____ Settlement Class Members made a valid and timely request for exclusion.

This Order is binding on all Settlement Class Members, except those who have timely and validly excluded themselves: _____.

Plaintiff, Settlement Class Members, and their successors and assigns are permanently barred from pursuing, either individually or as a class, or in any other capacity, any of the Released Claims against any of the Released Parties, as set forth in the Settlement Agreement. Pursuant to the release contained in the Settlement Agreement, the Released Claims are compromised, settled, released, discharged, and dismissed with prejudice, by virtue of these proceedings and this order.

This Final Order and Judgment bars and permanently enjoins Plaintiff and all members of the Settlement Class from (a) filing, commencing, prosecuting, intervening in or participating as a plaintiff, claimant or class member in any other lawsuit, arbitration or individual or class action proceeding in any jurisdiction (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), relating to the Released Claims, and (b) attempting to effect Opt Outs of a class of individuals in any lawsuit or arbitration proceeding based on the Released Claims, except that Settlement Class Members are not precluded from addressing, contacting, dealing with, or complying with requests or inquiries from any governmental authorities relating to the issues raised in this Lawsuit.

The Lawsuit is hereby dismissed with prejudice in all respects.

This Order, the Settlement Agreement, and any and all negotiations, statements, documents, and/or proceedings in connection with this Settlement are not, and shall not be construed as, an admission by Defendant of any liability or wrongdoing in this or in any other proceeding, or an admission that a litigation class would have been certifiable in this proceeding.

The Court hereby retains continuing and exclusive jurisdiction over the Parties and all matters relating to the Lawsuit and/or Settlement Agreement, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the settlement and this order, including the award of attorneys' fees, costs, disbursements, and expenses to Class Counsel.

Class Counsel's request for an award of attorneys' fees of \$_____ is approved.

Class Counsel's request for reimbursement of reasonable litigation costs and expenses in the amount of \$_____ is approved.

Plaintiff's request for a service award of \$_____ is approved.

IT IS SO ORDERED.

Dated: _____, 2023.

The Honorable Damon R. Leichty
United States District Court Judge