THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

COOPER MOORE and ANDREW GILLETTE, on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

ROBINHOOD FINANCIAL LLC, a Delaware limited liability company,

Defendant.

Case No. 2:21-cv-01571-BJR

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Plaintiffs Cooper Moore and Andrew Gillette request the Court grant final approval of the class action settlement that they reached with Defendant Robinhood Financial LLC. The settlement, reached after over two years of contested litigation, and following extensive arm's-length negotiations, resolves this class action that Plaintiffs brought under the Washington Commercial Electronic Mail Act, RCW 19.190, *et seq.* ("CEMA") and the Washington Consumer Protection Act, RCW 19.86, *et seq.* ("CPA").

Robinhood has agreed to pay $9,000,000 to establish a non-reversionary Settlement Fund for the benefit of Settlement Class Members who filed claims. It is an excellent result for the approximately 827,327 consumers who allegedly received Robinhood referral text messages on a telephone number with a Washington area code in violation of the CEMA and CPA.[1]

Settlement Administrator, JND Legal Administration, implemented the Court-approved notice plan and successfully delivered postcard and email notices to 96% of the identified Settlement Class Members. The supplemental publication notice program extended that reach even further. JND is in the process of reviewing the thousands of claims that have been submitted. As of June 12, 2022, JND has validated 30,745 claims, which is approximately 3.7% of the identified Settlement Class. JND reports that the number of valid claims could increase to more than 50,000 (approximately 6% of the identified class) before the final approval hearing.

Although the claims rate is on the low end of the rate Plaintiffs estimated at preliminary approval, it is typical of claims rates in similar cases and is not due to lack of notice—far from it. In addition to the successful direct notice plan, which included several rounds of email and postcard notice, JND implemented a multi-faceted publication notice plan that specifically targeted Washington residents who may have received the allegedly illegal texts. JND reports that, as of May 30, 2024, the Settlement Website had received 539,076 unique visitors and 2,813 calls had been placed to the dedicated telephone line set up for this case. Class Counsel fielded

[1] Deduplication of the class data identified approximately 827,327 unique Settlement Class Members and there are likely additional Settlement Class Members who could not be identified through Robinhood's records.

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an additional 182 calls from consumers with questions about the settlement. Declaration of Jennifer Rust Murray in Support of Final Approval (Murray Decl.) ¶ 2. This robust response to the notice is evidence that the notice program successfully reached its targeted audience.

Settlement Class Members who submitted a valid claim form will receive a significant cash payment. If the Court approves payment of administration costs, attorneys' fees, litigation expenses, and service payments to Mr. Moore and Mr. Gillette, each participating Settlement Class Member will receive approximately $111-$170 depending on the number of claims JND ultimately validates. This is an excellent per-claimant recovery under a statutory scheme that authorizes $500 in damages for each text message sent in violation of the CEMA and up to $1,500 if the conduct is found to be willful under the CPA.

No Settlement Class Member objected to the Settlement. Only five Settlement Class Members submitted valid requests to opt out of the Settlement. The Settlement is fair, reasonable, and adequate in all respects. Plaintiffs request the Court grant final approval of the Settlement by: (1) approving the Settlement Agreement; (2) determining that adequate notice was provided to the Settlement Class; (3) finally certifying the Settlement Class; (4) granting Class Counsel $2,250,000 in attorneys' fees and $142,407.76 in costs; (5) approving service payments to Mr. Moore and Mr. Gillette in the amount of $10,000 each; and (6) approving administration costs of approximately $1,065,000.

II. BACKGROUND

Plaintiffs brought this class action alleging that Robinhood's practice of assisting its users to send unsolicited advertising text messages to Washington residents through its "referral" program violates Washington law. Robinhood denies these allegations. *See* Dkt. Nos. 54, 64.

Plaintiffs described the hard-fought litigation that led to the class-wide settlement in their motion for preliminary approval and their fee petition. *See* Dkt. No. 91 (Mtn for Prelim. App.) at 1:17-3:3; Dkt. No. 92 (Terrell Prel. App. Decl.) ¶¶ 9-13; Dkt. No. 97 (Mtn for Fees and Costs) at 1:23-3:9; Dkt. No. 98 (Terrell Fee Decl.) ¶¶ 2-11. Over the course of more than two years of litigation, the parties engaged in substantial discovery, including multiple rounds of written

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discovery that led to Robinhood producing over 30,000 pages of documents related to the referral program. Dkt. No. 98 (Terrell Fee Decl.) ¶ 6. Plaintiffs deposed two of Robinhood's corporate representatives. *Id.* ¶¶ 6, 8. And after Plaintiffs obtained extensive sample data from Robinhood's computer systems documenting the text messages, they engaged an expert to identify the telephone numbers to which the text messages were sent. Dkt. No. 98 (Terrell Fee Decl.) ¶ 10. The parties also engaged in significant third-party discovery. *Id.* ¶ 8.

The litigation was always adversarial. The parties reached impasse over discovery that twice required Court intervention. Dkt. Nos. 60, 71. Plaintiffs defeated Robinhood's motion to dismiss (Dkt. No. 63) and commenced drafting their class certification motion. Only after Plaintiffs reached these milestones did they agree to attend mediation with experienced TCPA mediator, Robert Meyer of JAMS and, eventually, to settle the case. Dkt. No. 98 ¶ 14. The Settlement Class is comprised of approximately 827,327 unique class members identified in Robinhood's business records and an unknown number of class members that are not reflected in Robinhood's business records. *See* Declaration of Gina Intrepido-Bowden Regarding Notice Program Implementation, Settlement Administration, and Opt-Out Requests (Intrepido-Bowden Decl.) ¶ 10.[2]

Plaintiffs moved for preliminary approval of the settlement, which the Court granted. Dkt. No. 95. JND timely executed the court-approved notice plan, which included notice complying with the Class Action Fairness Act, 28 U.S.C. § 1715, email and mail notice to potential Settlement Class Members for whom an email or mailing address could be located, set up and implementation of a dedicated settlement website that provides a place to learn more about the case and proposed settlement, maintenance of a dedicated toll-free IVR phone line, reminder notices, a custom digital notice campaign, an internet search campaign, and a press release. *See generally* Intrepido-Bowden Decl.¶¶ 5-31.

[2] Plaintiffs had previously estimated that class contained approximately 1.3 million class members, but that estimate was based on the class data before deduplication.

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Settlement Class Members could submit claims electronically through a portal on the Settlement Website or manually by submitting a paper claim form via U.S. Mail. Intrepido-Bowden Decl. ¶ 5. To bolster claims, JND issued two rounds of reminder notices, the vast majority of which were successfully delivered. *Id.* ¶¶ 17-21. The steps JND took in providing notice were successful, reaching more than 96% of the Settlement Class. Intrepido-Bowden Decl. ¶ 32. Over 51,000 claims were submitted, including 30,745 that JND has approved so far. *Id.* ¶¶ 37-39.

III. ARGUMENT

Rule 23(e) provides that courts should grant final approval to class action settlements that are "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The 2018 amendments to Rule 23 articulate a four-factor test the intent of which is to "focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision …." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendments.

Under Rule 23(e)(2), the Court may approve a class action settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate" after considering whether (1) the class representative and class counsel have adequately represented the class; (2) the proposal was negotiated at arm's length; (3) 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 (4) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).

The factors in Rule 23 are consistent with and embody those previously identified by the Ninth Circuit as guides to determining whether a proposed settlement is fair, adequate, and reasonable. The factors previously discussed by the Ninth Circuit are: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement;

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(5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575–76 (9th Cir. 2004). Ultimately, "[d]eciding whether a settlement is fair" is "best left to the district judge who can develop a firsthand grasp of the claims, the class, the evidence, and the course of the proceedings—the whole gestalt of the case." *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018).

A. Plaintiffs and Class Counsel have adequately represented the Settlement Class.

The Court preliminary found that Plaintiffs and their counsel are capable of fairly and adequately protecting the interests of the members of the Settlement Class in connection with the Settlement Agreement. Dkt. No. 95 (Prelim. App. Order) ¶ 3(d). That finding remains accurate. Plaintiffs and Class Counsel have continued to vigorously represent the Settlement Class and have no conflicts of interest with any Settlement Class Members. Class Counsel have fielded approximately 182 calls from potential Settlement Class Members, diligently answering their questions. Murray Decl. ¶ 2. Mr. Moore and Mr. Gillette were instrumental to the case and the Settlement. They assisted in drafting the complaint, participated extensively with counsel in responding to written discovery, and sat for lengthy depositions. Dkt. No. 98 (Terrell Fee Decl.) ¶ 42; Dkt. 100 (Moore Decl.) ¶¶ 7-8, 10-12; Dkt. 101 (Gillette Decl.) ¶¶ 7-8, 10-12. Perhaps most importantly, the settlement was only possible because Plaintiffs rejected individual settlement offers in order to pursue class claims on behalf of other Washington consumers. Dkt. 100 (Moore Decl.) ¶ 9; Dkt. 101 (Gillette Decl.) ¶ 9. Both Plaintiffs were involved in settlement discussions and both support the settlement. Dkt. 100 (Moore Decl.) ¶ 15; Dkt. 101 (Gillette Decl.) ¶ 15.

B. The settlement is the result of arm's-length, non-collusive negotiations.

The parties approached settlement discussions in the same way they approached the litigation—by diligently advocating for their clients and the proposed class. The parties

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negotiated the settlement at arm's length, only after extensive discovery and motion practice. Dkt. No. 98 (Terrell Decl.) ¶¶ 2-11.

Although the parties did not reach agreement on the day they mediated, the parties' mediation with Robert Meyer was crucial to the settlement. With Mr. Meyer's assistance, the parties agreed on material terms a month after mediation and then continued to negotiate the settlement details for several more months. "[O]ne may take a settlement amount as good evidence of the maximum available if one can assume that parties of equal knowledge and negotiating skill agreed upon the figure through arms-length bargaining." *Ortiz v. Fiberboard Corp.*, 527 U.S. 815, 852 (1999); *see also* Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment ("the involvement of a neutral or court-affiliated mediator or facilitator in negotiations may bear on whether they were conducted in a manner that would protect and further the class interests").

Moreover, Class Counsel negotiated the Settlement with the benefit of many years of prior experience and a solid understanding of the facts and law of this case. *See* Dkt. No. 92 (Terrell Prelim. App. Decl.) ¶¶ 1-8; Dkt. No. 93 (Drake Prelim. App. Decl.) ¶¶ 11-19. Class Counsel have extensive experience litigating and settling class actions, and in particular, class actions brought under the TCPA. *See* Dkt. No. 92 (Terrell Prelim. App. Decl.) ¶¶ 4, 8.

Finally, the Settlement withstands the higher level of scrutiny the Ninth Circuit requires of pre-certification class action settlements. *See In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011); *see also McKinney-Drobnis v. Oreshack,* 16 F.4th 594, 608 (9th Cir. 2021) (reiterating that pre-certification settlements must withstand "heightened" scrutiny).

None of the "warning signs" of potential collusion the Ninth Circuit has identified exist here. *In re Bluetooth*, 654 F.3d at 947. Class Counsel have not requested a disproportionate distribution of the settlement. *See, e.g., In re Bluetooth*, 654 F.3d at 938 (involving a settlement that provided zero dollars for economic injury to the class, while setting aside up to $800,000 for class counsel); *Roes, 1–2 v. SFBSC Management, LLC*, 944 F.3d 1043 (9th Cir. 2019) (involving

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a settlement that provided counsel with attorneys' fees that were nearly half of the settlement fund). Rather, they seek just 25% of the Settlement Fund. The parties did not negotiate a "clear-sailing" arrangement, "in which defendants agreed not to object to an award of attorneys' fees." *In re Bluetooth*, 654 F.3d at 947. And the settlement does not contain a "kicker" in which "all fees not awarded would revert to defendants rather than be added to the *cy pres* fund or otherwise benefit the class." *Id*.

Class Counsel believe the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

C. The relief provided for the Settlement Class is adequate.

In determining whether the relief provided to the Settlement Class is adequate, courts must balance the strength of the plaintiff's case against the risk, expense, complexity, and duration of further litigation. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015).

1. The costs, risks, and delay of trial and appeal.

Plaintiffs believe they have a strong case for liability, but success is never guaranteed. Plaintiffs pointed out in their fee petition that there is little case law applying CEMA—the Washington Supreme Court has issued only a single opinion addressing the statute's provisions governing electronic text messages, *Wright v. Lyft*, 189 Wn.2d 718 (2017)—and new decisions could impact Plaintiffs' understanding of the law.

For example, the parties dispute the evidence Robinhood needs to prove its consent defense. In an unpublished decision, the Washington court of appeals held that whether a person consented is a question of fact and "a person clearly and affirmatively consents by unambiguously asserting voluntary agreement or concurrence or, in other words, by making an expression of affirmation of agreement or concurrence in a manner easily understood." *Budke v. Dan's Herbs, LLC*, 25 Wn. App. 2d 1005, 2022 WL 17969245, at *2 (2022) (unpublished), *rev. denied*, 1 Wn.2d 1013 (2023). Robinhood asserted that it could satisfy this burden by showing individuals consent to receive referral text messages by voluntarily providing their phone

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numbers to the Robinhood customers who sent the texts or by communicating with those individuals about Robinhood and the referral program. Plaintiffs disagree with Robinhood's interpretation of the law but recognize the risk this issue presents to both class certification and the merits of their claims.

Litigating this case to trial and through any appeals would be expensive, time-consuming and risky. The settlement provides certain, immediate, significant relief and should be approved. *See Almanzar v. Home Depot U.S.A., Inc.*, 2024 WL 36175, at *4 (E.D. Cal. Jan. 3, 2024) ("Approval of settlement is 'preferable to lengthy and expensive litigation with uncertain results.'"); *Nat'l Rural Telecomms. Coop. v. DIRECTV*, *Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("The Court shall 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.") (citation omitted); *see also Noll v. eBay, Inc.*, 309 F.R.D. 593, 606 (N.D. Cal. 2015) ("Immediate receipt of money through settlement, even if lower than what could potentially be achieved through ultimate success on the merits, has value to a class, especially when compared to risky and costly continued litigation.").

2. Claimants will receive substantial cash payments.

Rule 23(e)(2)(C)(ii) requires consideration of the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims. Cash payments will be distributed to Settlement Class Members who filed approved claims. Dkt. No. 93-1 (Settlement Agreement) § 4. If the Court approves the requested administration costs of $1,065,000,[3] a service payment of $10,000 to each of the Class Representative, requested attorneys' fees of $2,250,000 and litigation expenses of $142,407.76, a total of $5,522,592 will be distributed to Settlement Class Members whose claims are approved. Plaintiffs request that the Court approve all valid timely claims, as well as valid claims submitted after the May 13, 2024 deadline but before July 2, 2024, which is the deadline for the Settlement Administrator to

[3] JND originally estimated its settlement expenses to be $670,000. JNC has exceeded that amount due primarily to a large increase in the number of post cards and post card reminders that needed to be sent. Intrepido-Bowden Decl. ¶ 40.

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submit a supplemental declaration in support of settlement approval. *See* Intrepido-Bowden Decl. ¶ 37 (noting 86 late claims had been received as of May 30, 2024). Payments will be approximately $111-$170, which is approximately 22-34% of the minimum $500 per text that class members could recover under the CEMA and 7.4-11% of the maximum $1,500 statutory damages that each Settlement Class Member would be entitled to for each text message.

This is an excellent result that is in line with, or exceeds, per-claimant recoveries in other CEMA and analogous TCPA class action settlements. *See, e.g., Wright v. Lyft, Inc.*, No. 14-cv-00421 (BJR) (W.D. Wash.) (CEMA settlement with payments of up to $132 per class member based on circumstances); *Gragg v. Orange Cab Co., Inc.*, No. 12-cv-00576 (RSL) (W.D. Wash.) (CEMA settlement with payments of $48 per class claimant plus $12 voucher for all identifiable class members); *Abante Rooter and Plumbing, Inc., et al v. Alarm.com, Inc.*, No. 4:15-cv-06314-YGR, (N.D. Cal. Aug. 15, 2019) (claimants received $235 per phone number at which they received calls); *Steinfeld v. Discover Fin. Servs.*, No. C 12-01118, Dkt. No. 96 at ¶ 6 (N.D. Cal. Mar. 10, 2014) (claimants received $46.98); *Adams v. AllianceOne Receivables Mgmt., Inc.*, No. 3:08-cv-00248-JAH-WVG, Dkt. No. 137 (S.D. Cal. Sept. 28, 2012) (claimants received $40); *Kramer v. Autobytel, Inc., et al.*, No. 10-cv-2722, Dkt. 148 (N.D. Cal. 2012) (approving TCPA settlement providing for a cash payment of $100 to each class member); *Estrada v. iYogi, Inc.*, 2015 WL 5895942, at *7 (E.D. Cal. Oct. 6, 2015) (granting preliminary approval to TCPA settlement where class members estimated to receive $40).

3. Class Counsel's requested attorneys' fees are reasonable.

Under Rule 23(e)(2)(C)(iii), the Court should consider "the terms of any proposed award of attorney's fees, including timing of payment." The Settlement Agreement provides that Plaintiffs' request for court-approved attorneys' fees will not exceed 25% of the total Settlement Fund ($2,250,000) and will be paid on the same date as the awards to Eligible Claimants. *See* Dkt. 93-1 (Settlement Agreement) §§ 1.04, 4.03. Class Counsel's request is consistent with, if not less than, awards in similar class actions in the Ninth Circuit. *See, e.g., Ikuseghan v. Multicare Health Sys*., 2016 WL 4363198, at *2 (W.D. Wash. Aug. 16, 2016) (awarding a fee of

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30% of a $2.5 million settlement fund); *Bonoan v. Adobe, Inc*., 2021 WL 912257 (N.D. Cal. Mar. 10, 2021) (awarding $333,333 in attorneys' fees of a $1 million settlement fund).

The lodestar method confirms the propriety of the requested fee, which represents a reasonable 1.98 on their $1,136,709.00 lodestar. *Vizcaino v. Microsoft*, 290 F.3d 1043, 1051, n. 6 (9th Cir. 2002). Though free to do so, no Settlement Class Member objected to the award sought by Class Counsel. Intrepido-Bowden Decl. ¶¶ 33-34. Plaintiffs' application for attorneys' fees and costs with supporting documentation was posted to the Settlement Website after it was filed so that Settlement Class Members could access these materials. Murray Decl. ¶ 3.

D. The settlement treats Settlement Class Members equitably relative to each other.

Under Rule 23(e)(2)(D), the Court must consider whether the Settlement Agreement treats Settlement Class Members equitably relative to each other. Here, each valid claimant will receive a pro rata share of the Settlement Fund after settlement expenses are deducted. Dkt. No. 93-1 (Settlement Agreement) § 4.06. Courts in the Ninth Circuit have concluded that settlements using the same formula to calculate the settlement share for each class member satisfy Rule 23(e)(2)(D). *See Haralson v. U.S. Aviation Services Corp.,* 2021 WL 5033832, at *5 (N.D. Cal. Feb. 3, 2021) (finding "the Settlement treats class members equitably and that this factor supports approval"); *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *8 (N.D. Cal. Jul. 22, 2019) (finding equitable to class members an allocation based on pro rata distribution). This factor supports approval.

E. The reaction of the Settlement Class was positive.

The absence of a large number of objections raises a "strong presumption" that the terms are favorable to class members. *See In re Facebook, Inc. Internet Tracking Litig.*, 2024 WL 700985, at *1 (9th Cir. Feb. 7, 2024) (unpublished); *see also In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320-21 (N.D. Cal. 2018) (finding that low rates of objections and opt-outs are "indicia of the approval of the class" (citation omitted)); *In re ConAgra Foods, Inc.,* 2023 WL 8937622, at *10 (C.D. Cal. Sept. 18, 2023) (noting that lack of objections "indicates very strong overall support for the [settlement] and supports final approval"). Settlement Class

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Members must be provided sufficient opportunity to object to the Settlement, including Plaintiffs' request for attorneys' fees, costs, and service awards. *See In re Mercury Interactive Corp.*, 618 F.3d 988, 994 (9th Cir. 2010).

Despite there being hundreds of thousands of Settlement Class Members, not a single Settlement Class Member objected and only five validly excluded themselves from the settlement. Intrepido-Bowden Decl. ¶¶ 33-36. In all, this is an overwhelmingly positive reaction to the terms of the settlement, supporting approval.

F. The Court-Ordered notice program is constitutionally sound.

Rule 23(e)(1) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement. Fed. R. Civ. P. 23(e)(1). Class members are entitled to the "best notice that is practicable under the circumstances" of any proposed settlement before it is finally approved by the Court. Fed. R. Civ. P. 23(c)(2)(B).

The notice program consisted of multiple components, which included (1) three rounds of email notice; (2) postcard notice to potential Settlement Class Members for whom an email could not be located; (3) a settlement informational website; (4) a toll-free information telephone line; (5) a digital add campaign targeted to consumers in Washington State; (6) supplemental digital advertisements targeted to individuals who may have moved from Washington state and would be interested in Robinhood's products; (7) supplemental digital advertisements to known potential Settlement Class Members; (8) an internet search campaign; and (9) a press release. Intrepido-Bowden Decl. ¶¶ 5-30. The initial mailing took place on March 24, 2024, followed by supplemental email and postcard notice to potential Settlement Class Members who had not submitted claims on April 12, 2024 and April 29, 2024. *Id*. ¶¶ 12, 14, 17-21.

The Settlement Website contained documents relevant to the Settlement, including the operative complaint, the Settlement Agreement, and Plaintiffs' Motion for an Award of Attorneys' Fees, Litigation Costs, and Service Awards, provided responses to frequently asked questions, advised Settlement Class Members about the extended deadline, and listed a toll-free telephone number Settlement Class Members could use to contact the Administrator. Intrepido-

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Bowden Decl. ¶ 5. JND received 2,813 calls and tracked 1,407,256 views of the Settlement Website by 539,076 unique visitors. *Id.* ¶ 6.

JND estimates that the mail and email notice reached 96% of the identified potential Settlement Class Members with that reach extended by the supplemental publication notice program, satisfying Rule 23 requirements. Intrepido-Bowden Decl. ¶ 32.

G. The Settlement Class should be finally certified.

In its Preliminary Approval Order, the Court conditionally certified the Settlement Class under Federal Rule of Civil Procedure 23(a) and (b)(3). Dkt. No. 95 (Prelim. App. Order) ¶¶ 3-4. The requirements of both Rule 23(a) and (b)(3) remain satisfied. For all of the reasons set forth in the Court's Preliminary Approval Order, Dkt. No. 95, and Plaintiffs' Motion for Preliminary Approval, Dkt. No. 91 at 7:7-11:4, the Court should finally certify the Settlement Class.

H. The requested fees, costs, and service payment should be approved.

Not one Settlement Class Member objected to Class Counsel's request for reasonable attorneys' fees, and service awards to Class Representatives Moore and Gillette. For the reasons set forth in Plaintiffs' Motion for an Award of Attorneys' Fees, Litigation Costs, and Service Awards, Dkt. No. 97, Class Counsel respectfully request that the Court grant Class Counsel's request for $2,250,000 in attorneys' fees and reimbursement of $142,407.76 in costs, and service payments in the amount of $10,000 in recognition of Mr. Moore and Mr. Gillette's service to the Settlement Class.

IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request the Court enter an Order: (1) approving the Settlement Agreement; (2) determining that adequate notice was provided to the Settlement Class; (3) finally certifying the Settlement Class; (4) granting Class Counsel $2,250,000 in attorneys' fees and $142,407.76 in costs; (5) approving service payments in the amount of $10,000 to each Class Representative ($20,000 total); and (6) approving JND's administration costs of $1,065,000.

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RESPECTFULLY SUBMITTED AND DATED this 12th day of June, 2024.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

COOPER MOORE and ANDREW GILLETTE, on their own behalf and on behalf of all others similarly situated, Plaintiffs, v. ROBINHOOD FINANCIAL LLC, a Delaware limited liability company, Defendant.	Case No. 2:21-cv-01571-BJR **FINAL APPROVAL ORDER AND JUDGMENT**

This matter, having come before the Court on Plaintiffs' Motion for Final Approval of the proposed class action settlement with Defendant Robinhood Financial LLC ("Defendant"); the Court having considered all papers filed and arguments made with respect to the proposed settlement of the claim asserted under the Washington Commercial Electronic Mail Act ("CEMA") and the Washington Consumer Protection Act ("CPA"), by the proposed Settlement Class, and the Court, being fully advised, finds that:

1. On July 16, 2024 the Court held a Final Approval Hearing, at which time the Parties were afforded the opportunity to be heard in support of or in opposition to the settlement. The Court received no objections to the settlement.

2. Notice to the Settlement Class required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order. Such Notice has been given in an adequate and sufficient manner; constitutes the best notice practicable

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under the circumstances, including the dissemination of individual notice to all Settlement Class Members who can be identified through reasonable effort; and satisfies Rule 23(e) and due process.

3. Defendant has timely served notification of this settlement with the appropriate officials pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715.

4. The Court finds that the Court has jurisdiction over the parties and that all members of the Settlement Class have standing under Article III of the United States Constitution because a person's receipt of an unsolicited text message sent without the recipient's clear and affirmative consent intrudes upon privacy and is an injury for purposes of Article III. *See Van Patten v. Vertical Fitness Group, LLC*, 874 F.3d 1037 (9th Cir. 2017).

5. The terms of the Settlement Agreement are incorporated fully into this Order by reference.

6. The Court finds that the terms of Settlement Agreement are fair, reasonable, and adequate in light of the complexity, expense, and duration of litigation, and the risks involved in establishing liability and damages, and maintaining the class action through trial and appeal.

7. The Court has considered the factors enumerated in Rule 23(e)(2) and finds they counsel in favor of final approval.

8. The Court finds that the relief provided under the settlement constitutes fair value given in exchange for the release of claims.

9. The Parties and each Settlement Class Member have irrevocably submitted to the jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of the Settlement Agreement.

10. The Court finds that it is in the best interests of the Parties and the Settlement Class and consistent with principles of judicial economy that any dispute between any Settlement Class Member (including any dispute as to whether any person is a Settlement Class Member) and any Released Party which, in any way, relates to the applicability or scope of the Settlement Agreement or the Final Judgment and Order should be presented exclusively to this Court for resolution by this Court.

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IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

11. This action is a class action against Defendant on behalf a class of persons defined as follows (the "Settlement Class"): All persons or entities who received a Robinhood referral program text message, and who were Washington residents at the time of the receipt of such text message, between and including August 9, 2017 and February 13, 2024, which was the date the Court entered an order granting preliminary approval. Persons who clearly and affirmatively consented in advance to receive Robinhood referral program text messages are excluded from the class. The Settlement Class does not include Defendant, any entity that has a controlling interest in Defendant, and Defendant's current or former directors, officers, counsel, and their immediate families. The Settlement Class also does not include any persons who validly requested exclusion from it.

12. The Court finds that the Settlement Class satisfies all of the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3) as set forth in its earlier order granting preliminary approval in this matter.

13. The Settlement Agreement submitted by the Parties for the Settlement Class is finally approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure as fair, reasonable, and adequate and in the best interests of the Settlement Class. The Settlement Agreement shall be deemed incorporated herein and shall be consummated in accordance with the terms and provisions thereof, except as amended or clarified by any subsequent order issued by this Court.

14. As agreed by the Parties in the Settlement Agreement, upon Final Approval, the relevant parties shall be released and discharged in accordance with the Settlement Agreement.

15. As agreed by the parties in the Settlement Agreement, upon Final Approval, each Settlement Class Member is enjoined and permanently barred from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Released Claims.

16. As agreed by the parties in the Settlement Agreement, upon Final Approval, Defendant is enjoined and permanently barred from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Robinhood Released Claims.

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17. Upon consideration of Class Counsel's application for fees and costs and other expenses, the Court awards $_____ as reasonable attorneys' fees and $_____ as reimbursement for reasonable out-of-pocket expenses, which shall be paid from the Settlement Fund.

18. Upon consideration of the application for approval of a service award, Class Representative Cooper Moore is awarded the sum of $_____, and Class Representative Andrew Gillette is awarded the sum of $_____, to be paid from the Settlement Fund, for the service they have performed for and on behalf of the Settlement Class.

19. The Court authorizes Class Counsel and defense counsel to authorize payment to the Settlement Administrator from the Settlement Fund as set forth in the Settlement Agreement.

20. Neither this Final Judgment and Order, nor the Settlement Agreement, shall be construed or used as an admission or concession by or against Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Released Claims or Robinhood Released Claims. This Final Judgment and Order is not a finding of the validity or invalidity of any claims in this lawsuit or a determination of any wrongdoing by Defendant or any of the Released Parties. The final approval of the Settlement Agreement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of the Class Representatives, Settlement Class Members, or Defendant.

21. Without affecting the finality of this judgment, the Court hereby reserves and retains jurisdiction over this settlement, including the administration and consummation of the settlement. In addition, without affecting the finality of this judgment, the Court retains exclusive jurisdiction over Defendant and each member of the Settlement Class for any suit, action, proceeding, or dispute arising out of or relating to this Order, the Settlement Agreement, or the applicability of the Settlement Agreement. Without limiting the generality of the foregoing, any dispute concerning the Settlement Agreement, including, but not limited to, any suit, action, arbitration, or other proceeding by a Settlement Class Member in which the provisions of the

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Settlement Agreement are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, shall constitute a suit, action, or proceeding arising out of or relating to this Order. Solely for purposes of such suit, action, or proceeding, to the fullest extent possible under applicable law, the Parties hereto and all Settlement Class Members are hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

22. This action is hereby dismissed on the merits, in its entirety, with prejudice and without costs.

23. The Court finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, and directs the Clerk to enter final judgment.

24. The following persons have validly excluded themselves from the Settlement Class in accordance with the provisions of the Settlement Agreement and Preliminary Approval Order and are thus excluded from the terms of this Order: Amanda Bessler, Raelynne Tomaszewski, Marla Sabin, Diana Lejeune, and Carol Hurlburt. Further, because the settlement is being reached as a compromise to resolve this litigation, including before a final determination of the merits of any issue in this case, none of the excluded individuals listed above may invoke the doctrines of *res judicata*, collateral estoppel, or any state law equivalents to those doctrines in connection with any further litigation against Defendant in connection with the claims settled by the Settlement Class.

IT IS SO ORDERED.

Dated: _____

_____
BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE

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