

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Plaintiff Candice Burnett (“Plaintiff”), on behalf of herself and two putative classes of persons (identified and defined below as the “Settlement Classes”) on the one hand, and Defendant CallCore Media, Inc. (“Defendant” or “CallCore”) on the other, subject to court approval. Plaintiff and Defendant are collectively referred to as the “Parties.”

WHEREAS Plaintiff filed a class action in the Southern District of Texas, styled *Burnett v. CallCore Media, Inc.*, No. 4:21-cv-03176, under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.* and Section 302 of the Texas Business and Commerce Code (“Texas Solicitation Act”) against Defendant. Plaintiff alleged Defendant violated the TCPA by placing prerecorded/artificial voice calls to Plaintiff and the members of the Settlement Classes without the requisite consent to place such calls. Plaintiff alleged Defendant violated the Texas Solicitation Act by placing such calls to persons with Texas area codes despite not first obtaining the required registration from the State of Texas to place such calls. The action is referred to as “the Lawsuit.”;

WHEREAS the Parties completed classwide discovery including written discovery, the issuance of third-party subpoenas, and various depositions in the Lawsuit;

WHEREAS Plaintiff filed a motion for class certification in the Lawsuit;

WHEREAS the Parties conducted a mediation before the Honorable Jeff Kaplan (Ret.), and, were able to reach the essential terms of a settlement after an all-day mediation and extensive arm’s length negotiations;

WHEREAS, Defendant denies and continues to deny the claims asserted by Plaintiff, denies Plaintiff and/or the Settlement Classes are entitled to damages and maintains that they have meritorious defenses to the claims alleged in the Lawsuit;

WHEREAS, while denying all liability and without admitting or conceding fault or liability or the validity of Plaintiff' claims, or that Plaintiff or any individual in the Settlement Classes is entitled to any relief as a result of Defendant's conduct, Defendant has agreed to settle the claims that are the subject of the Lawsuit as set forth in this Agreement;

WHEREAS, the Settlement Classes include approximately 67,113 persons to whom calls were placed;

WHEREFORE, the Parties stipulate and agree that the claims of Plaintiff and the Settlement Classes should be and are hereby compromised and settled, subject to approval by the trial court, upon the following terms and conditions:

1. Recitals. The above-described recitals are incorporated into this Agreement.
2. For Settlement Only. This Agreement is entered into for purposes of resolving the disputes between Defendant on one hand, and Plaintiff and the Settlement Classes on the other, concerning certain claims asserted in the Lawsuit. The Parties desire and intend to seek the District Court's approval of the settlement and a final judgment approving the settlement between the Parties concerning the claims of Plaintiff and the Members of the Settlement Classes as set forth in this Agreement. The Parties agree to undertake all steps necessary to effectuate the purpose of the Agreement, to secure the district court's approval of the Agreement, and to oppose any interventions and objections to the Agreement. If the trial court does not finally approve the Agreement, the Parties expressly agree that this Agreement is a nullity as described in Section 16.
3. Certification of the Settlement Classes. For settlement purposes only, the Parties hereby stipulate to seek certification of the following settlement classes defined as follows: (1) TCPA Class: The persons to whom calls were placed by or on behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore; and, (2) Texas

Class: The persons with Texas addresses and/or Texas area codes to whom calls were placed on or behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore. These two classes are collectively referred to as the "Settlement Classes". Where the individual classes are referenced, said classes will be referred to as the "TCPA Class" or the "Texas Class." The class members bound by the class definition are those with the phone numbers included on the data produced by Defendant as of the date said calls were placed.

"Settlement Class Member" means any person included in the Settlement Classes who does not timely and properly opt out of this settlement. Defendant does not oppose and hereby agrees to certification of the Settlement Classes for settlement purposes only, but that will not be deemed a concession that certification of any class in the Lawsuit is, or was, appropriate, nor would Defendant be precluded from challenging class certification in any other action or in further proceedings in the Lawsuit if the Settlement is not finalized or finally approved. If the Settlement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Classes resulting from this Agreement will be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings involving Defendant.

4. Representation of the Settlement Classes. Plaintiff will request to be appointed as the "Class Representative." Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. will request to be appointed as "Class Counsel." Defendant will not oppose these requests.

5. Notice Information: To the extent Defendant can reasonably determine from its records, Defendant will provide the Settlement Administrator (defined in section 11) with the last known phone number, name, address and e-mail of each Settlement Class Member. This information is referred to as the "Notice Information." Defendant will provide a declaration

attesting to the authenticity of the Notice Information provided to the Settlement Administrator. Defendant will provide the Notice Information to the Settlement Administrator within seven days of the Parties executing the Agreement.

6. Preliminary Approval. Plaintiff will file a motion with the District Court for preliminary approval of the Settlement on or before January 31, 2024. The motion for preliminary approval will seek an order that: (a) preliminarily approves the settlement of the Lawsuit; (b) certifies the Settlement Classes as defined in Section 3 above; (c) approves and appoints Plaintiff as representative of the Settlement Classes; (d) approves and appoints attorneys Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. as Class Counsel; (e) approves the forms prepared by the Parties for giving notice of the settlement to the members of the Settlement Classes, copies of which are attached to this Agreement; (f) approves the methods agreed to by the Parties for giving notice of the settlement to the Settlement Classes; and, (g) sets deadlines for: (i) providing notice to the members of the Settlement Classes; (ii) members of the Settlement Classes to submit requests for exclusion/opt-out and objections to the proposed settlement; and, (iii) members of the Settlement Classes to submit claims. The Parties will then seek final approval of the settlement and entry of a “Final Approval Order and Judgment” (as defined in section 12).

7. The Relief. Defendant, through itself and its insurer, will make available a settlement fund totaling Two-Million Dollars (\$2,000,000.00)(“Settlement Fund”) to pay the claims of the members of the Settlement Classes, the cost of settlement administration, a class representative service award, and Class Counsel’s attorneys’ fees and litigation expenses. No unclaimed amounts will revert to Defendant. Defendant shall provide the upfront costs referenced in Section 11 below to the Settlement Administrator within 30 days of the Court granting

preliminary approval of the settlement. The remainder of the Settlement Fund will be paid to the Settlement Administrator within fourteen (14) days of the Court entering its Final Approval Order and Judgment.

Each member of the Settlement Classes who submits a valid claim shall be entitled to receive a *pro rata* share of the fund dependent on the number of claimants after accounting for the cost of settlement administration, the representative service award, and attorneys' fees and expenses. Class members with Texas addresses and/or area codes will receive an additional 10% payment of the pro rata share. Payments shall be made by check or electronic payment from the Settlement Administrator to each member of the Settlement Classes who submits a valid claim.

The amount of all checks uncashed within 120 days of distribution by the settlement administrator shall be distributed by the Settlement Administrator in accordance with the escheatment requirements of the state in which the Settlement Class Member is located.

8. Notice to Settlement Class. In the event the District Court enters an order granting preliminary approval of the settlement as described in Section 6, notice of the settlement will be mailed to the individuals in the Settlement Classes within fourteen days after such order. The Settlement Administrator will send the class notice by first class U.S. mail to members of the Settlement Classes at such persons last known address, as listed in the Notice Information, and will also send the notice by e-mail to all members of the Settlement Classes for whom Defendant has an e-mail address. Prior to mailing the notice, the Settlement Administrator will update the address information provided by Defendant through the National Change of Address ("NCOA") database maintained by the U.S. Postal Service and shall run a search to determine and/or confirm the names and addresses of the members of the Settlement Classes as of the date said phone number received a call on the date specified by Defendant's records. Any mailed notice returned to the

Settlement Administrator with a new forwarding address will be re-mailed one time to the individual at the new forwarding address. The mail notice to the Settlement Classes will contain a summary description of the Agreement, include a claim form, identify the Settlement Administrator, and direct recipients to the website, from which information about the settlement can also be obtained and through which claim forms may be uploaded (in addition to being mailed). The Settlement Administrator will provide a declaration to be filed with the District Court, as part of the final approval papers, stating that these notice procedures were followed.

The Settlement Administrator shall set up a dedicated website to advise persons of the settlement and through which members of the Settlement Classes may submit claims. Members of the Settlement Classes will have ninety (90) days from the date the Settlement Administrator sends notice of the settlement to submit claims electronically or by mail. The content and format of the website will be agreed upon by the Parties, and the website will be operational on the date the notice is mailed to the Settlement Class Members.

Members of the Settlement Classes shall be able to opt-out and exclude themselves from the settlement or object to the settlement. Such election to opt-out or object must be made within sixty (60) days after the notice is first sent. For an objection to be valid, the objection shall state: (a) the name, address, and phone number of the objector, (b) the specific bases for the objection, and (c) whether they intend to appear at the final approval hearing. Counsel shall also have the option to take the deposition of the objector within 21 days of receiving the objection.

The parties agree that the Class Notice to be sent will be substantially similar to that attached as Exhibit 1. The parties agree that the Long Form Class Notice, which will only appear on the settlement website, will be substantially similar to that attached as Exhibit 2.

9. Claims Process: Any member of the Settlement Classes who wish to receive a cash payment shall submit a valid claim form within ninety (90) days after the Settlement Administrator sends notice. To be valid, the claim form must be signed physically or digitally by the class member. The parties agree that the Claim Form will be substantially similar to that attached to this Agreement as Exhibit 3.

10. Incentive Award and Attorneys' Fees. Class Counsel will apply for an award of up to 33 1/3% of the settlement fund (\$666,666.67) for their attorneys' fees and reasonable litigation expenses. Class Counsel will also request an incentive award for Plaintiff of up to \$12,000.00 for her service in the Lawsuit. Defendant will not oppose these amounts. The incentive award and attorney fee award will be set forth in the Final Approval Order and Judgment and is within the Court's sole discretion to award.

11. Settlement Administration and Expenses. Plaintiffs, with approval of Defendant, shall select a settlement administrator for purposes of issuing notice to the members of the Settlement Classes and administering the settlement ("Settlement Administrator"). Defendant's approval of the settlement administrator shall not be unreasonably withheld. Defendant shall pay the administrator's costs and expenses. As provided in Section 7 above, the administrator's costs and expenses shall be paid from the Settlement Fund. The Parties will consult with the Settlement Administrator to design a notice campaign that satisfies due process. The Settlement Administrator shall also comply with all notice requirements set forth in this Agreement.

12. Final Approval. The preliminary approval order described in Section 6 will set a date for a Final Approval Hearing, at which the Parties will request that the District Court enter a Final Approval Order and Judgment, consistent with this Agreement and the Parties' efforts to consummate the settlement. With the exception of up-front costs required by the Settlement

Administrator, Defendant shall not be obligated to pay any amount from the Settlement Sum pursuant to this Agreement except after the “Effective Date”, as described in Section 13.

13. Effective Date. If there are no objections to the settlement, the “Effective Date” of this Agreement shall be the fourteen calendar days after the trial court has signed the Final Approval Order and Judgment as applied to Plaintiff and the Members of the Settlement Classes. If there are objections to the settlement, the Effective Date shall be fourteen days after all of the following conditions have occurred and been satisfied:

(a) The District Court has entered: (i) a final order approving this Settlement Agreement under Federal Rule of Civil Procedure 23; and (ii) a final judgment granting the relief and releases described in this Agreement, including that in Sections 7 and 15; and

(b) The time for appeal or to seek permission to appeal from the District Court’s approval of this Agreement and entry of final judgment described in subsection (a) of this paragraph has expired or, if appealed, approvals of this Agreement and any final judgment have been affirmed by the court of last resort to which such appeal can be taken, and such affirmance has become no longer subject to further appeal or review.

14. Payments. Within thirty (30) days after the Effective Date, the Settlement Administrator shall distribute to members of the Settlement Classes who have submitted valid claims the payments described in Section 7 and in addition, shall distribute the attorney’s fees and incentive awards described in Section 10, consistent with the Final Approval Order and Judgment.

15. Release. Upon entry of Final Approval and Judgment, Plaintiff and each member of the Settlement Classes that do not opt out or otherwise exclude themselves from the settlement will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, Defendant and its insurers, attorneys, owners, officers, directors, partners, members,



managers, agents, employees, related entities, assumed names, and representatives from any and all claims, actions, causes of action, demands, rights, damages, costs of whatsoever nature presently known or unknown which arise from and/or relate in any way to the calls referred to in the definitions of the Settlement Classes (as described in Section 3 above) that they had, have, or may have had as of December 21, 2023 (defined as the “Released Claims”).

16. Effect of Trial Court’s Denial of Preliminary or Final Approval. If the District Court does not preliminarily approve the settlement in substantially the same form as set forth in this Agreement, or if the settlement or the judgment approving the settlement is appealed and not approved on appeal in substantially the same form as set forth in this Agreement, this Agreement shall be null and void. In such event, and upon the trial court entering an order unconditionally and finally adjudicating that this Agreement and settlement will not be approved in substantially the same form as set forth in this Agreement, then: (a) this Agreement is terminated and is of no force and effect, and no party shall be bound by any of its terms, except for Defendant’s reimbursement of the Settlement Administrator’s expenses that it has incurred; (b) to the extent applicable, any preliminary order approving the settlement, certifying the Settlement Classes, approving the notice or notice procedure, and providing notice to the Settlement Classes shall be vacated; (c) the Agreement and all of its provisions and all negotiations, statements, and proceedings shall be without prejudice to the rights of any of the Parties; (d) each of the Parties shall be restored to their respective positions as of the date this Agreement was fully executed; and, (e) neither the settlement nor any of its provisions or the fact that this Agreement has been made shall be admissible in this Lawsuit, or discoverable or admissible in any other action for any purpose whatsoever.

17. Requests by Individuals in Settlement Classes. Requests for exclusion, objections to the settlement, and all other notices regarding the settlement, to the extent received by either Party, shall be sent to the Settlement Administrator, who in turn will provide same to Defendant.

18. No Admission of Liability. This Agreement affects the settlement of claims that are denied and contested, and nothing contained herein shall be construed as an admission by Defendant of any liability of any kind. Defendant denies any liability in connection with any claims made in the Lawsuit. Defendant enters into this Agreement merely to avoid the further expenditure of attorneys' fees, litigation and appellate expenses, and the disruption of ongoing business obligations and activities that would result from the continuation of the Lawsuit.

19. Confirmatory Discovery. Prior to class notice being sent, Defendant's representative(s) shall provide Plaintiff's counsel a declaration attesting to the fact that the spreadsheet previously produced in discovery as part of the Lawsuit to Plaintiff's counsel identifies: (1) the complete names and other contact information that Defendant has for the Settlement Classes; and, (2) that the spreadsheet identifies all of the potential 67,113 members of the Settlement Classes.

20. Entire Agreement. This Agreement contains the entire agreement and understanding between the Parties concerning the subject matter hereof, and any and all prior oral or written agreements or understandings between the Parties related hereto are superseded. This Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all Parties.

21. Headings. Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

22. Warranties. The Parties further represent, warrant, and agree that, in executing this Agreement, they do so with full knowledge of any and all rights they may have with respect to the claims released in this Agreement, and that they have received legal counsel from their attorneys with regard to the facts involved and the controversy herein compromised and with regard to their rights arising out of such facts. Each Party represents such party has not assigned, transferred or granted, or purported to assign, transfer, or grant, any of the claims, demands and cause(s) of action asserted in the Lawsuit. Each of the Parties executing this Agreement warrants that he or she has the authority to enter into this Agreement and to legally bind the Party for which he or she is signing.

23. Successors and Assigns. This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective insurers, successors, assigns, heirs, agents, employees, attorneys, representatives, officers, parents, affiliates, and subsidiaries.

24. Further Cooperation. The Parties agree to execute such further and additional documents and instruments, as shall be necessary or expedient to carry out the provisions of this Agreement and shall in good faith undertake all reasonable acts to effectuate the provisions of this Agreement.

25. Governing Law. The contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the State of Texas, without regard to its conflict of laws or choice of law provisions. Any suit to enforce this Agreement shall be brought in the United States District Court for the Southern District of Texas, Houston Division.

26. Mutual Interpretation. The Parties agree and stipulate that the settlement was negotiated on an “arm’s-length” basis between parties of equal bargaining power. The Agreement has been drafted jointly by Class Counsel and Defendant’s counsel. Accordingly, this Agreement

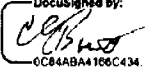
is mutually created, and no ambiguity shall be construed in favor of or against any of the Parties. This Agreement was prepared after an agreement in principle to resolve the case was reached after an all-day mediation with the Honorable. Jeff Kaplan (Ret).

27. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and such counterparts together shall constitute one instrument. Electronically scanned signatures are acceptable for the execution of this Agreement.

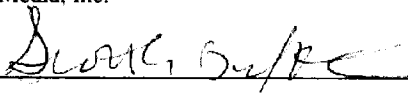
28. Severability. Each term and provision of this Agreement shall be construed and interpreted so as to render it enforceable. In the event any provision of this Agreement is held to be illegal or unenforceable, the remaining terms of this Agreement shall be binding and enforceable.

IN WITNESS WHEREOF, the Parties and CallCore's insurer have executed this Agreement on the date(s) set forth below.

Dated: 1/24/2024

DocuSigned by:  
  
0C84ABA4166C434  
\_\_\_\_\_  
Candice Burnett

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

CallCore Media, Inc.  
By:   
Printed Name: SCOTT A. BUFFEN  
Title: CO-OWNER

Dated: 1/25/2024

First Community Insurance Company

By: DocuSigned by:  
Walter Sykes  
ID#6CA27BB27461...

Printed Name: walter sykes

Title: President