



2. I opened Burke Law Offices, LLC in September 2008. The firm concentrates on consumer class action and consumer work on the plaintiff side. Since the firm began, it has focused on prosecuting cases pursuant to the Telephone Consumer Protection Act, although the firm accepts the occasional action pursuant to the Fair Debt Collection Practices Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, Electronic Funds Transfer Act, Illinois Consumer Fraud Act, Truth in Lending Act and the Fair Labor Standards Act, among others. The firm also sometimes accepts mortgage foreclosure defense or credit card defense case. Except for debt collection defense cases, the firm works almost exclusively on a contingency basis.

3. I am regularly asked to speak regarding TCPA issues, on the national level. For example, I conducted a one-hour CLE on prosecuting TCPA autodialer and Do Not Call claims pursuant to the Telephone Consumer Protection Act for the National Association of Consumer Advocates in summer 2012, and spoke on similar subjects at the annual National Consumer Law Center (“NCLC”) national conferences in 2012, 2013, 2014, 2015 and 2016. I also spoke at a National Association of Consumer Advocates conference regarding TCPA issues in March 2015, and in May 2016, I spoke on a panel concerning TCPA issues at the 2016 Practising Law Institute Consumer Financial Services meeting in Chicago, Illinois.

4. I also am actively engaged in policymaking as to TCPA issues, and have had several *ex parte* meetings with various decision makers and staffers at the Federal Communications Commission.

5. I make substantial efforts to remain current on the law, including class action issues. I attended the National Consumer Law Center's Consumer Rights Litigation Conference in 2006 through 2016, and was an active participant in the Consumer Class Action Intensive Symposium between 2006 and 2013. In October 2009, I spoke on a panel of consumer class action attorneys welcoming newcomers to the conference. In addition to regularly attending Chicago Bar Association meetings and events, I was the vice-chair of the Chicago Bar Association's consumer protection section in 2009 and the chair in 2010. In November 2009, I moderated a panel of judges and attorneys discussing recent events and decisions concerning arbitration of consumer claims and class action bans in consumer contracts.

6. Some notable autodialer TCPA class actions and other cases that my firm has worked on include: *Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2017 WL 2798387, at \*1 (N.D. Ill. June 28, 2017) (certifying Fed.R.Civ.P. 23(b)(2) litigation class for injunctive relief in TCPA case); *Fulton Dental, LLC v. Bisco, Inc.*, 860 F.3d 541 (7th Cir. 2017) (rejecting notion that a Fed.R.Civ.P. 67

tender of funds to the Court can “moot” a TCPA class action); *Meredith v. United Collection Bureau, Inc.*, 319 F.R.D. 240, 241 (N.D. Ohio 2017) (ordering TCPA class call data produced); *Hurst v. Monitronics Int'l, Inc.*, No. 1:15-CV-1844-TWT, 2016 WL 523385 (N.D. Ga. Feb. 10, 2016) (motion to compel arbitration denied in TCPA class case), *aff'd*, --- Fed.Appx. ---- 2017 WL 957188 (11<sup>th</sup> Cir. Mar. 13, 2017); *Cross v. Wells Fargo, N.A.*, 1:15-cv-1270, Docket Entry 103 (Feb. 10, 2017 N.D.Ga.) (final approval granted for \$30M class settlement where I was lead counsel); *Lowe v. CVS Pharmacy, Inc.*, No. 14 C 3687, 2017 WL 528379 (N.D. Ill. Feb. 9, 2017) (personal jurisdiction motion denied in large TCPA case); *Markos v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-1156-LMM, 2017 WL 416425 (Jan. 30, 2017, N.D.Ga.) (final approval granted for \$16M class settlement where I was lead counsel); *Tillman v. The Hertz Corp.*, No. 16 C 4242, 2016 WL 5934094 (N.D. Ill. Oct. 11, 2016) (motion to compel TCPA class case into arbitration denied); *Smith v. Royal Bahamas Cruise Line*, No. 14-CV-03462, 2016 WL 232425 (N.D. Ill. Jan. 20, 2016) (personal jurisdiction motion denied); *Bell v. PNC Bank, Nat'. Ass'n.*, 800 F.3d 360 (7th Cir. 2015) (class certification affirmed in wage and hour case); *Charvat v. Travel Services*, 2015 WL 3917046 (N.D. Ill. June 24, 2015) (determining proper scope of class representative discovery in TCPA case), and 2015 WL 3575636 (N.D. Ill. June 8, 2015) (granting plaintiff's motion to compel

vicarious liability/agency discovery in TCPA case); *Lees v. Anthem Ins. Cos. Inc.*, 2015 WL 3645208 (E.D. Mo. June 10, 2015) (finally approving TCPA class settlement where I was class counsel); *Hofer v. Synchrony Bank*, 2015 WL 2374696 (E.D. Mo. May 18, 2015) (denying motion to stay TCPA case on primary jurisdiction grounds); *In re Capital One TCPA Litig.*, No. 11-5886, 2015 WL 605203 (N.D. Ill. Feb. 12, 2015) (granting final approval to TCPA class settlement where I was class counsel); *Wilkins v. HSBC Bank Nevada, N.A.*, 2015 WL 890566 (N.D. Ill. Feb. 27, 2015) (granting final approval to TCPA class settlement where I was class counsel); *Hossfeld v. Government Employees Ins. Co.*, 88 F. Supp. 3d 504 (D. Md. 2015) (denying motion to dismiss in TCPA class action); *Legg v. Quicken Loans, Inc.*, 2015 WL 897476 (S.D. Fla. Feb. 25, 2015) (denying motion to dismiss in TCPA case); *Hanley v. Fifth Third Bank*, No. 1:12-cv-1612 (N.D. Ill. Dec. 27, 2013) (final approval for \$4.5 million nonreversionary TCPA settlement); *Smith v. State Farm Mut. Auto. Ins. Co.*, 2014 WL 228892, (N.D.Ill. Jan. 21, 2014) (designating me as pursuant to Fed.R.Civ.P. 23(g) interim liaison counsel pursuant to contested motion in large TCPA class case), 2014 WL 3906923 (Aug 11, 2014) (motion to dismiss denied in cutting edge vicarious liability case); *Markovic v. Appriss, Inc.*, 2013 WL 6887972 (S.D. Ind. Dec. 31, 2013) (motion to dismiss denied in TCPA class case); *Martin v. Comcast Corp.*, 2013 WL 6229934 (N.D.

Ill. Nov. 26, 2013) (motion to dismiss denied in TCPA class case); *Gold v. YouMail, Inc.*, 2013 WL 652549 (S.D. Ind. Feb. 21, 2013) (contested motion for leave to amend granted to permit cutting-edge vicarious liability theory allegations); *Martin v. Dun & Bradstreet, Inc.*, No. 1:12-cv-215 (N.D. Ill. Aug. 21, 2012) (certifying litigation class and appointing me as sole class counsel) (final approval granted for \$7.5 million class settlement granted January 16, 2014); *Desai v. ADT, Inc.*, No. 1:11-cv-1925 (N.D. Ill. June 21, 2013) (final approval for \$15 million TCPA class settlement granted); *Martin v. CCH, Inc.*, No. 1:10-cv-3494 (N.D. Ill. Mar. 20, 2013) (final approval granted for \$2 million class settlement in TCPA autodialer case); *Swope v. Credit Mgmt., LP*, 2013 WL 607830 (E.D. Mo. Feb. 19, 2013) (denying motion to dismiss in "wrong number" TCPA case); *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838 (N.D. Ill. Aug. 10, 2012) (denying motion to dismiss TCPA case on constitutional grounds); *Soppet v. Enhanced Recovery Co.*, 2011 WL 3704681 (N.D. Ill. Aug 21, 2011), *aff'd*, 679 F.3d 637 (7th Cir. 2012) (TCPA defendant's summary judgment motion denied. My participation was limited to litigation in the lower court); *D.G. ex rel. Tang v. William W. Siegel & Assocs., Attorneys at Law, LLC*, 2011 WL 2356390 (N.D. Ill. Jun 14, 2011); *Martin v. Bureau of Collection Recovery*, 2011WL2311869 (N.D. Ill. June 13, 2011) (motion to compel TCPA class discovery granted); *Powell v.*

*West Asset Mgmt., Inc.*, 773 F. Supp. 2d 898 (N.D. Ill. 2011) (debt collector TCPA defendant's "failure to mitigate" defense stricken for failure to state a defense upon which relief may be granted); *Fike v. The Bureaus, Inc.*, 09-cv-2558 (N.D. Ill. Dec. 3, 2010) (final approval granted for \$800,000 TCPA settlement in autodialer case against debt collection agency); *Donnelly v. NCO Fin. Sys., Inc.*, 263 F.R.D. 500 (N.D. Ill. Dec. 16, 2009) (Fed. R. Civ. P. 72 objections overruled in toto), 2010 WL 308975 (N.D. Ill. Jan 13, 2010) (novel class action and TCPA discovery issues decided favorably to class).

7. Before I opened Burke Law Offices, LLC, I worked at two different plaintiff boutique law firms doing mostly class action work, almost exclusively for consumers. Some decisions that I was actively involved in obtaining while at those law firms include: *Cicilline v. Jewel Food Stores, Inc.*, 542 F. Supp. 2d 831 (N.D. Ill. 2008) (FCRA class certification granted); 542 F. Supp. 2d 842 (N.D. Ill. 2008) (plaintiffs' motion for judgment on pleadings granted); *Harris v. Best Buy Co.*, No. 07 C 2559, 2008 U.S. Dist. LEXIS 22166 (N.D. Ill. Mar. 20, 2008) (Class certification granted); *Matthews v. United Retail, Inc.*, 248 F.R.D. 210 (N.D. Ill. 2008) (FCRA class certification granted); *Redmon v. Uncle Julio's, Inc.*, 249 F.R.D. 290 (N.D. Ill. 2008) (FCRA class certification granted); *Harris v. Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596, 2008 WL 400862 (N.D. Ill. Feb.

7, 2008) (FCRA class certification granted); *aff'd upon objection* (Mar. 28, 2008); *Harris v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. Oct. 10, 2007) (motion to dismiss in putative class action denied); *Barnes v. FleetBoston Fin. Corp.*, C.A. No. 01-10395-NG, 2006 U.S. Dist. LEXIS 71072 (D. Mass. Aug. 22, 2006) (appeal bond required for potentially frivolous objection to large class action settlement, and resulting in a \$12.5 million settlement for Massachusetts consumers); *Longo v. Law Offices of Gerald E. Moore & Assocs., P.C.*, No. 04 C 5759, 2006 U.S. Dist. LEXIS 19624 (N.D. Ill. March 30, 2006) (class certification granted); *Nichols v. Northland Groups, Inc.*, Nos. 05 C 2701, 05 C 5523, 06 C 43, 2006 U.S. Dist. LEXIS 15037 (N.D. Ill. March 31, 2006) (class certification granted for concurrent classes against same defendant for ongoing violations); *Lucas v. GC Services, L.P.*, No. 2:03 cv 498, 226 F.R.D. 328 (N.D. Ind. 2004) (compelling discovery), 226 F.R.D. 337 (N.D. Ind. 2005) (granting class certification); *Murry v. America's Mortg. Banc, Inc.*, Nos. 03 C 5811, 03 C 6186, 2005 WL 1323364 (N.D. Ill. May 5, 2006) (Report and Recommendation granting class certification), *aff'd*, 2006 WL 1647531 (June 5, 2006); *Rawson v. Credigy Receivables, Inc.*, No. 05 C 6032, 2006 U.S. Dist. LEXIS 6450 (N.D. Ill. Feb. 16, 2006) (denying motion to dismiss in class case against debt collector for suing on time-barred debts).



8. I graduated from Colgate University in 1997 (B.A. International Relations), and from Loyola University Chicago School of Law in 2003 (J.D.). During law school I served as an extern to the Honorable Robert W. Gettleman of the District Court for the Northern District of Illinois and as a law clerk for the Honorable Nancy Jo Arnold, Chancery Division, Circuit Court of Cook County. I also served as an extern for the United States Attorney for the Northern District of Illinois, and was a research assistant to adjunct professor Hon. Michael J. Howlett, Jr.

9. I was the Feature Articles Editor of the Loyola Consumer Law Review and Executive Editor of the International Law Forum. My published work includes International Harvesting on the Internet: A Consumer's Perspective on 2001 Proposed Legislation Restricting the Use of Cookies and Information Sharing, 14 Loy. Consumer L. Rev. 125 (2002).

10. I became licensed to practice law in the State of Illinois in 2003 and the State of Wisconsin in March 2011, and am a member of the bar of the United States Court of Appeals for the First, Second, Seventh, Eighth, and Eleventh Circuits, as well as the Northern, Central, and Southern Districts of Illinois, Eastern and Western Districts of Wisconsin, Northern and Southern Districts of Indiana, the District of Nebraska, and the Western District of New York. I am also

a member of the Illinois State Bar Association, the Seventh Circuit Bar Association, and the American Bar Association, as well as the National Association of Consumer Advocates.

11. My firm and the other firms on the plaintiff team in this matter accepted this case on a contingency fee basis. When Burke Law Offices, LLC loses cases, the firm takes in no money whatsoever, regardless of how hard we worked and regardless of how much money we spent on depositions, experts and other out-of-pocket costs. This happens. For example, I lost *Greene v. DirecTV, Inc.*, No. 10-117, 2010 WL 4628734 (N.D. Ill. 2010), *Elkins v. Medco Health Solutions, Inc.*, No. 12-2141, 2014 WL 1663406 (E.D. Mo. Apr. 25, 2014), *Fitzhenry v. ADT*, 2014 WL 6663379 (S.D. Fla. Nov. 3, 2014) and *Barrett v. ADT Corp.*, No. 2:15-CV-1348, 2016 WL 865672 (S.D. Ohio Mar. 7, 2016), *leave to appeal denied* (Mar. 21, 2016), each hard-fought litigations that we accepted on a contingency basis. My firm put substantial time and money into each; resources that could have been allocated to other cases. We believed that the plaintiff/class would prevail in these cases when we accepted them for representation, but in the end were incorrect. As with other lawyers, sometimes I think I should have won cases or motions that I eventually lose. The difference is that while most lawyers (including my adversaries) receive remuneration regardless of whether they win or lose, I do

not. These are not the only cases I have lost, but they illustrate the risks associated with this kind of contingency practice.

12. The contracts my firm drafts and negotiates with our clients call for the client to pay, on a contingency basis, 40% of the total amount of any judgment or settlement after costs had been deducted. When the firm began taking TCPA cases, its agreement with clients called for fees in the amount of one-third after expenses. However, because we had focused on TCPA cases for quite some time and believed the market would bear such, in around 2011, the firm raised our fee to 40%, after expenses. We have not had any potential clients balk a 40% fee-indeed, even former clients who returned with new potential cases agreed to this fee arrangement; ostensibly because they believed the firm deserved such a fee because of my representation and results. Based upon conversations with other TCPA lawyers in around the country, I am confident that the market rate for plaintiff contingency representation for this kind of case is between one-third and 40%.

13. Since 2012, members of my team have engaged in comprehensive litigation to pursue class action TCPA claims against Wells Fargo. This case, which arises from automated calls made as to automobile transactions, is the fourth settlement of its kind that my team and I have obtained in the Northern District of

Georgia; the prior settlements are: *Markos v. Wells Fargo*, 14-cv-1156-LMM (N.D. Ga.) (mortgage-related calls); *Cross v. Wells Fargo*, 15-cv-1270-RWS (N.D. Ga.) (deposit account calls); and *Prather v. Wells Fargo*, 16-cv-4231-CAP (N.D. Ga.) (approval pending, student loan line-of-business calls). But before any of these cases were filed, our team members -- together and independently -- thoroughly researched and investigated Wells Fargo's practices and Plaintiff's legal claims by, among other things, interviewing Class Members, reviewing Class Members' pertinent documents and information, including account applications and agreements, and researching relevant TCPA case law and regulations. This information was critical to our understanding of the nature of the Class's claims and the scope of potential damages and remedies, particularly because the TCPA legal landscape is in a state of flux.

14. Throughout the development and progression of this case, our team took care to work efficiently by assigning specific tasks among firms. In doing so, we were able to capitalize on specific expertise and obtain the best and most efficient resolution to this matter.

15. In my view and experience, this is a good settlement. All participating class members will receive an equal share of the settlement fund after deducting the costs of notice and claims administration, attorneys' fees and expenses subject

to the Court's approval, and an incentive award to Plaintiff Luster, subject to the Court's approval.

16. None of the settlement fund will revert back to Wells Fargo.

17. The parties reached their settlement following meaningful exchanges of documents and briefs, with the in-person assistance of a respected mediator—Hunter Hughes—and after considering the risks, uncertainties, burden, and expense associated with continued litigation. The settlement was informed by the production of the parties exchanged thousands of pages of documents, and briefing by the parties for settlement purposes regarding the strengths and weaknesses of their respective positions. Plaintiff's counsel required information regarding the size and scope of the putative class as a condition precedent to mediation, which was subject to confirmatory discovery under the settlement. Concurrent with settlement negotiations, my team and I continued to speak with scores of Class Members about their experiences and problems with Wells Fargo's telephone calls.

18. Mr. Hughes was instrumental in assisting the parties reach an agreement in this case, which was finalized only after months of substantive back-and-forth between the parties and their counsel.

19. Given the meaningful recovery for the class that results from the parties' settlement—which is well in line with other TCPA class action settlements

against financial institutions—and considering the serious risks associated with continuing to litigate this matter, my co-counsel and I firmly believe that the settlement is fair, reasonable, and adequate, and that it far outweighs the delay and considerable risk attendant to proceeding with this matter in a contested fashion.

20. My team and I conducted additional confirmatory discovery to confirm the Final Class Size. I took the deposition of Timothy Rae, Wells Fargo's corporate representative most knowledgeable about the size of the Settlement Class, on April 18, 2017. This deposition showed a downward adjustment of the number of class members. Agr., at ¶ 4.01; Dkt. No. 66. While on the surface the adjustment may have seemed disappointing because the aggregate amount of the settlement wound up being lower than originally anticipated, the settlement is structured so that the per-class-member Settlement Award remains the same as before. The lower number thus shows that fewer people than originally thought were adversely affected by Wells Fargo's actions, which is a wholly positive development.

21. Although it is not possible to predict the precise amount of the Cash Awards until all claims have been submitted and verified, based on my experience in similar TCPA class actions, I conservatively estimate that each Cash Award will be in the range of \$25 to \$50.

22. Prior to agreeing to use KCC Class Actions Services, LLC as the claims administrator in this matter, co-counsel and I considered bids from several settlement administration companies.

23. Thereafter, co-counsel and I engaged in further negotiations, over the course of several weeks, to obtain the best price available for the administration of claims in this matter, given the notice plan required. The final bid for notice and admin was substantially lower than the initial bid we received, and there were several rounds of competitive bidding for this matter.

24. This requested Service Award is reasonable in my view and I request that it should be approved, especially in light of the fact that Plaintiff Luster received, and refused, a Rule 68 offer of judgment from Wells Fargo. Mr. Luster put the Class's interests before his own, rejecting guaranteed money while at the same time selling out the class early on. The offer of judgment also placed Mr. Luster at personal risk: Mr. Luster may have had to pay Wells Fargo's costs had he not secured a judgment in excess of the money offered. Such costs in a case like this typically dwarf an individual plaintiff's recovery.

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

Executed this 24th day of July, 2017, in Chicago, Illinois.

/s/ Alexander H. Burke