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8 *Attorney for Plaintiff Daniel Berman and the Proposed Class*

9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 DANIEL BERMAN, STEPHANIE
13 HERNANDEZ, and ERICA RUSSELL,

14 Plaintiff,

15 v.

16 FREEDOM FINANCIAL NETWORK, LLC,
17 FREEDOM DEBT RELIEF, LLC, FLUENT,
18 INC., and LEAD SCIENCE, LLC,

19 Defendants.

Case No. 4:18-cv-01060-YGR

**DECLARATION OF MATTHEW P.
MCCUE IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

DATE: April 25, 2023
TIME: 2:00 p.m.
LOCATION: Oakland Courthouse
Courtroom 1 - 4th Floor

20 I, Matthew P. McCue, declare under penalty of perjury:

21 1. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, I
22 am over 18 years of age, am competent to testify and make this affidavit on personal knowledge. I
23 make this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action
24 Settlement. In this declaration I will describe the work that I and my co-counsel have done in
25 identifying and investigating potential claims in the action and to set forth my qualifications to serve
26 as class counsel, and describe my experience in representing plaintiff classes in class actions, and
27 cases brought under the 47 U.S.C. § 227, the Telephone Consumer Protection Act. (“TCPA”).

28 2. I was involved in every stage of representing Plaintiffs in this case, from pre-trial
investigation, analysis of Plaintiffs’ potential claims, and review of documents and discovery

1 responses, retaining and working with expert witnesses, motion practice, mediation and settlement
2 negotiations.

3 3. Only after they had a sufficient understanding of the strengths and weaknesses of
4 their case did Plaintiffs' counsel enter into settlement negotiations, proceeding to mediate with the
5 Robert Meyer. Esq. of JAMS in Los Angeles

6 4. Based on my experience in prosecuting class actions under the TCPA, I believe this
7 settlement represents an excellent result for the class and merits preliminary approval by the Court.

8 5. My firm and that of my co-counsel have received no payment for fees and costs.
9 Since beginning work on this case in February of 2018 my firm worked with no guarantee of being
10 compensated for its time and efforts. Payment of my fees has always been contingent on successfully
11 obtaining relief for the Plaintiffs and class members. As a result, there was a substantial risk of non-
12 payment, particularly in light of the legal challenges involved in litigating this case. Work on this
13 case has necessarily been to the exclusion of work on other matters that likely would have generated
14 fees. I have also been denied use of the any such fees the course of this case.

15 6. My firm has spent 190 hours prosecuting Plaintiffs' claims. Billed at my hourly rate
16 of \$800 my firm's hours yield a lodestar of \$152,000. I am familiar with the billing rates for attorneys
17 with similar experience, particularly with expertise in matters arising under the Telephone Consumer
18 Protection Act, 47 U.S.C. § 227, *et seq.* and my billing rate is reasonable and is consistent with the rates
19 of attorneys of similar experience and qualification. My firm additionally expended \$28,596 in
20 reasonable and necessary expenses in the litigation, including expert fees, court charges and travel
21 expenses.

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24 **QUALIFICATIONS OF COUNSEL**

25 7. I am a 1993 honors graduate of Suffolk Law School in Boston, Massachusetts.
26 Following graduation from law school, I served as a law clerk to the Justices of the Massachusetts
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1 Superior Court. I then served a second year as a law clerk for the Hon. F. Owen Eagan, United States
2 Magistrate Judge for the USDC District of Connecticut.

3 8. In 1994, I was admitted to the Bar in Massachusetts. Since then, I have been admitted
4 to practice before the United States District Court for the District of Massachusetts, the First Circuit
5 Court of Appeals, the United States District Court for the District of Colorado, the Sixth Circuit
6 Court of Appeals and the United States Supreme Court.

7 9. Following my clerkships, I was employed as a litigation associate with the Boston law
8 firm of Hanify & King. In 1997, I joined the law firm of Mirick O'Connell as a litigation associate
9 where I focused my trial and appellate practice on Plaintiffs' personal injury and consumer protection
10 law.

11 10. In the summer of 2002, I was recognized by the legal publication Massachusetts
12 Lawyers Weekly as one of five "Up and Coming Attorneys" for my work on behalf of consumers
13 and accident victims.

14 11. In November of 2004, I started my own law firm focusing exclusively on the litigation
15 of consumer class actions and serious personal injury cases.

16 12. I am in good standing in every court to which I am admitted to practice.

17 13. A sampling of other class actions in which I have represented classes of consumers
18 follows:

19 i. Mey v. Herbalife International, Inc., USDC, D. W. Va., Civil Action
20 No. 01-C-263M. Co-lead counsel with Attorney Broderick and additional co-
21 counsel, prosecuting consumer class action pursuant to TCPA on behalf of
22 nationwide class of junk fax and prerecorded telephone solicitation recipients.
\$7,000,000 class action settlement preliminarily approved on July 6, 2007 and
granted final approval on February 5, 2008.

23 ii. Mulhern v. MacLeod d/b/a ABC Mortgage Company, Norfolk
24 Superior Court, 2005-01619 (Donovan, J.). Representing class of
25 Massachusetts consumers who received unsolicited facsimile advertisements in
26 violation of the TCPA and G.L. c. 93A. Case certified as a class action, and I
27 was appointed co-lead counsel with Attorney Edward Broderick by the Court
28 on February 17, 2006, settlement for
\$475,000 granted final approval by the Court on July 25, 2007.

- 1 iii. Evan Fray-Witzer, v. Metropolitan Antiques, LLC, NO. 02-5827 Business
2 Session, (Van Gestel, J.). In this case, the defendant filed two Motions to
3 Dismiss challenging the Plaintiffs' right to pursue a private right of action and
4 challenging the statute at issue as violative of the telemarketer's First
5 Amendment rights. Both Motions to Dismiss were denied. Class certification
6 was then granted and I was appointed co-lead class counsel. Companion to this
7 litigation, my co-counsel and I successfully litigated the issue of whether
8 commercial general liability insurance provided coverage for the alleged illegal
9 telemarketing at issue. We ultimately appealed this issue to the Massachusetts
10 Supreme Judicial Court which issued a decision reversing the contrary decision
11 of the trial court and finding coverage. See Terra Nova Insurance v. Fray-Witzer
12 et al., 449 Mass. 206 (2007). This case resolved for \$1,800,000.
- 13 iv. Shonk Land Company, LLC v. SG Sales Company, Circuit Court of Kanawha
14 County, West Virginia, Civil Action No. 07-C-1800 (multi-state class action on
15 behalf of recipients of faxes in violation of TCPA, settlement for \$2,450,000,
16 final approval granted in September of 2009.
- 17 v. Mann & Company, P.C. v. C-Tech Industries, Inc., USDC, D. Mass., C.A.
18 1:08CV11312-RGS, class action on behalf of recipients of faxes in violation of
19 TCPA, settlement for \$1,000,000, final approval granted in January of 2010.
- 20 vi. Evan Fray Witzer v. Olde Stone Land Survey Company, Inc.,
21 Massachusetts Superior Court, Civil Action No. 08-04165 (February
22 3, 2011) (final approval granted for TCPA class settlement). This
23 matter settled for \$1,300,000.
- 24 vii. Milford & Ford Associates, Inc. and D. Michael Collins vs.
25 Cell-Tek, LLC, USDC, D. Mass. C. A. 1:09-cv- 11261-DPW,
26 class action on behalf of recipients of faxes in violation of TCPA,
27 settlement for \$1,800,000, final approval granted August 17, 2011
28 (Woodlock, J.).
- viii. Collins v. Locks & Keys of Woburn Inc., Massachusetts Superior
 Court, Civil Action No. 07-4207-BLS2 (December 14, 2011) (final
 approval granted for TCPA class settlement). This matter settled for
 \$2,000,000.
- ix. Brey Corp t/a Hobby Works v. Life Time Pavers, Inc., Circuit Court for
 Montgomery County, Maryland, Civil Action No. 349410-V. This matter
 settled for \$1,575,000.
- x. Collins, et al v. ACS, Inc. et al, USDC, District of Massachusetts, Civil Action
 No. 10-CV-11912 a TCPA case for illegal fax advertising, which settled for
 \$1,875,000.
- xi. Desai and Charvat v. ADT Security Services, Inc., USDC, Northern
 District of Illinois, Civil Action No. 11-CV-1925, settlement of
 \$15,000,000, approved, awarding fees of one third of common fund.

- 1 xii. Benzion v. Vivint, 0:12cv61826, USDC S.D.Fla., settlement of
2 \$6,000,000 granted final approval in February of 2015.
- 3 xiii. Kensington Physical Therapy v. Jackson Physical Therapy Partners, USDC,
4 District of Maryland, 8:11cv02467, settlement of \$4,500,000 granted final
5 approval in February of 2015.
- 6 xiv. Jay Clogg Realty v. Burger King Corp., USDC, District of Maryland,
7 8:13cv00662, settlement of \$8.5 million granted final approval in May of 2015.
- 8 xv. Charvat v. AEP Energy, 1:14cv03121 ND Ill, class settlement of \$6 million
9 granted final approval on September 28, 2015.
- 10 xvi. Mey v. Interstate National Dealer Services, Inc., USDC, ND. Ga., 1:14-cv-
11 01846-ELR, TCPA class settlement of \$4,200,000 granted final approval on
12 June 8, 2016.
- 13 xvii. Philip Charvat and Ken Johansen v. National Guardian Life Insurance
14 Company, USDC, WD. WI., 15-cv-43-JDP, TCPA class settlement for
15 \$1,500,000 granted final approval on August 4, 2016.
- 16 xviii. Thomas Krakauer v. Dish Network, L.L.C., USDC, MDNC, Civil Action No.
17 1:14-CV-333 on September 9, 2015. I was co-trial counsel in the case which
18 resulted in a jury verdict in favor of plaintiff and the class of \$20,446,400 on
19 January 19, 2017. (Dkt. 292). On May 22, 2017, this amount was trebled by
20 the Court after finding that Dish Network's violations were "willful or
21 knowing", for a revised damages award of \$61,339,200. (Dkt. No. 338).
22 Affirmed on appeal, *Krakauer v. Dish Network, LLC*, 925 F.3d 643 (4th Cir.
23 May 20, 2019), *cert. denied. Dish Network, L.L.C. v. Krakauer*, 140 S.Ct. 676
24 (December 16, 2019).
- 25 xix. Dr. Charles Shulruff, D.D.S. v. Inter-med, Inc., 1:16-cv-00999, ND Ill, class
26 settlement of \$400,000 granted final approval on November 22, 2016.
- 27 xx. Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC, 13-cv-
28 00042, in which a TCPA class settlement was granted final approval on
29 December 1, 2016 with TCPA settlement in the amount of \$2,150,00 with one
30 of three defendants an assignment of rights against defendant's insurance
31 carrier. Second settlement of \$3,300,000 granted final approval on September
32 25, 2018.
- 33 xxi. Bull v. US Coachways, Inc., 1:14-cv-05789, settlement distributing \$3,250,000
34 approved on May 18, 2019.
- 35 xxii. Smith v. State Farm Mut. Auto. Ins. Co., et. al., USDC, ND. Ill., 1:13-cv-
36 02018, TCPA class settlement of \$7,000,000.00 granted final approval on
37 December 8, 2016.
- 38 xxiii. Mey v. Frontier Communications Corporation, USDC, D. Ct., 3:13-cv-1191-
39 MPS, a TCPA class settlement of \$11,000,000 granted final approval on June 2,
40 2017.

- 1 xxiv. Biringer v. First Family Insurance, Inc., USDC, ND. Fla., a TCPA class
2 settlement of \$2,900,000 granted final approval on April 24, 2017.
- 3 xxv. Abramson v. Alpha Gas and Electric, LLC, USDC, SD. NY., 7:15-cv-05299-
4 KMK, a TCPA class settlement of \$1,100,000 granted final approval on May 3,
5 2017.
- 6 xxvi. Heidarpour v. Central Payment Co., USDC, MD. Ga., 16-cv-01215, a TCPA
7 class settlement of \$6,500,000 granted final approval on May 4, 2017.
- 8 xxvii. Abante Rooter and Plumbing, Inc. v. New York Life Insurance Company,
9 USDC, SD. NY., 1:16-cv-03588-BCM, a TCPA class settlement of \$3,250,000
10 granted final approval on February 27, 2018.
- 11 xxviii. Abramson v. CWS Apartment Home, LLC, USDC, WD. Tex., 16-cv-01215, a
12 TCPA class settlement of \$368,000.00 granted final approval on May 19, 2017.
- 13 xxix. Charvat v. Elizabeth Valente, et al, USDC, NDIL, 1:12-cv-05746, \$12,500,000
14 TCPA settlement granted final approval on November 4, 2019, appeal pending.
- 15 xxx. Mey v. Got Warranty, Inc., et. al., USDC, NDWV., 5:15-cv-00101-JPB-JES, a
16 TCPA class settlement of \$650,000 granted final approval on July 26, 2017.
- 17 xxxi. Mey v. Patriot Payment Group, LLC, USDC, NDWV., 5:15-cv-00027-JPB-JES,
18 a TCPA class settlement of \$3,700,000 granted final approval on July 26, 2017.
- 19 xxxii. Charvat and Wheeler v. Plymouth Rock Energy, LLC, et al, USDC, EDNY,
20 2:15-cv-04106-JMA-SIL, a TCPA class settlement of \$1,675,000 granted final
21 approval on July 31, 2018.
- 22 xxxiii. Fulton Dental, LLC v. Bisco, Inc., USDC, NDIL, 1:15-cv-11038. TCPA class
23 settlement for \$262,500 granted final approval on March 7, 2018.
- 24 xxxiv. Abante Rooter and Plumbing, Inc. v. Birch Communications, Inc., USDC,
25 NDGA, 1:15-cv-03262-AT. TCPA class settlement of \$12,000,000 granted final
26 approval on December 14, 2017.
- 27 xxxv. Mey v. Venture Data, LLC and Public Opinion Strategies, USD NDWV, 5:14-
28 cv-123. Final approval of TCPA settlement granted on September 8, 2018.
- xxxvi. Abante Rooter and Plumbing, Inc. v. Alarm.com, Inc., USDC, NDCA 4:15-cv-
06314-YGR. TCPA class settlement of \$28,000,000 granted final approval on
August 15, 2019.
- xxxvii. In Re Monitronics International, Inc. Telephone Consumer Protection Act
Litigation, USDC, NDWV, 1:13-md-02493-JPB-MJA, a TCPA class settlement
of \$28,000,000 granted final approval on June 12, 2018.
- xxxviii. Abante Rooter and Plumbing, Inc. v. Allstate Insurance Company, et al,
USDC, NDIIL 1:15-cv-00925. TCPA class settlement of \$10,500,000 granted
final approval on August 15, 2019.

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xxxix. Kaiser v. CVS Pharmacy, Inc., et al, USDC NDIL, 1:14-cv-03687, TCPA class settlement of \$15,000,000 approved on January 30, 2020.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE SIGNED UNDER PENALTY OF PERJURY OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT EXECUTED THIS THIS 17th DAY OF MARCH 2023 IN THE COMMONWEALTH OF MASSACHUSETTS.

/s/ Matthew P. McCue
Matthew P. McCue