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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 SABER AMHED and JOHN
12 MONTELEONE, individually and
13 on behalf of all others similarly
14 situated,

14 Plaintiffs,

15 v.

16 HSBC BANK USA, N.A. et. al.,

17 Defendants.

Case No.: 5:15-cv-02057-FMO-SP

**DECLARATION OF JOSHUA B.
SWIGART IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS AND
SERVICE AWARDS**

JUDGE: Fernando M. Olguin

DECLARATION OF JOSHUA B. SWIGART

I, JOSHUA B. SWIGART, declare:

1. I have been appointed one of the Class Counsel for plaintiffs SABER AHMED and JOHN MONTELEONE (the “Plaintiffs”) in the above-captioned action against defendants HSBC BANK USA, N.A. (“HSBC”) and PHH MORTGAGE CORPORATION (“PHH,” together the “Defendants”).
2. I am over the age of 18 and am fully competent to make this declaration.
3. I am a member in good standing of the bars of the State of California and District of Columbia, Washington State, and Michigan. I am also admitted in every federal district in California, the Ninth Circuit Court of Appeals, and the Supreme Court of the United States. I also have handled federal litigation in Arizona, Washington, Minnesota, Tennessee and Texas.
4. I am writing this declaration in support of Plaintiffs’ Motion for Award of Attorneys’ Fees, Costs, and Service Awards.
5. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.
6. Hyde & Swigart worked on this case solely on a contingency basis, despite knowing that there was a risk that Counsel may not succeed.
7. My employment with Hyde & Swigart recently ceased, and I have since founded the firm Swigart Law Group, APC.

HOURS INCURRED AND LITIGATION COSTS

8. As of approximately September 15, 2019, I have incurred approximately 5 hours in litigating this action against Defendants for alleged violations of the TCPA. Specifically, I incurred approximately 0.2 reviewing pleadings, approximately 0.9 hours reviewing documents, approximately 0.1 hours communicating with defense counsel, approximately 0.2 hours related to

1 mediation preparation, approximately 2.2 hours related to discovery,
2 approximately 0.9 hours communicating with co-counsel, and approximately
3 0.5 hours on administrative tasks. All of these hours were logged
4 contemporaneously in the normal course of business.

5 9. I was approved for an hourly rate \$705 in *Ronquillo-Griffin v. TransUnion*
6 *Rental Screening Sols., Inc.*, No. 17cv129 JM (BLM), 2019 U.S. Dist. LEXIS
7 79021, at *27 (S.D.Cal. May 9, 2019).

8 10. Thus, I believe my requested hourly billing rate of \$705 for this action is
9 justified.

10 11. In this action, Hyde & Swigart incurred costs in connection with this
11 litigation (which was taken on a contingency fee basis) in the amount of
12 \$5.10, for printing costs in reviewing this declaration.

13 **EXPERIENCE**

14
15 12. Since my admission to the California bar in 2003, I have been engaged
16 exclusively in the area of consumer rights litigation, litigating both on
17 individual and class action basis, primarily in the area of fair debt
18 collections, California invasion of privacy statute pursuant to Cal. Civ. Code
19 § 630, *et seq.* (CIPA), the defense of debt collection lawsuits, false
20 advertising statutes, unfair competitions, and telephone protection act.

21 13. The firm Hyde & Swigart, in which I was a principal, litigated over 5,000
22 cases in the past eleven years. My firm has several offices, including in San
23 Diego, California; Phoenix, Arizona, Dallas, Texas, and Minneapolis,
24 Minnesota. Hyde & Swigart had extensive experience in consumer class
25 actions and other complex litigation. Hyde & Swigart had a history of
26 aggressive, successful prosecution of consumer actions, specifically under
27 the CIPA, Fair Debt Collection Practices Act, and Telephone Consumer
28 Protection Act.

CONSUMER RELATED EXPERIENCE AND RESULTS

- 1
2
3 14. Hyde & Swigart had extensive experience in consumer related issues,
4 including California Penal Code § 632, *et seq.*, the Fair Debt Collection
5 Practices Act, TCPA, and other related consumer statutes. A brief summary
6 of a non-inclusive list of notable decisions are as follows:
7
8 a. *Abdeljalil v. GE Capital Retail Bank*, 12-CV-02078-JAH-MDD (S.D.
9 Cal) (Class certification granted);
10
11 b. *Adams v. AllianceOne, Inc.*, 08-CV-0248-JAH (S.D. Cal) (Nationwide
12 TCPA class settlement providing class relief of \$40 per claiming class
13 member resulting in over \$2,500,000 paid to claiming class members;
14 final approval granted in 2013);
15
16 c. *Afewerki v. Anaya Law Group*, No. 15-56510 (9th Cir. 2017) (vacating
17 the district court’s summary judgment on an FDCPA claim and holding
18 that false statements made by defendant were material, explaining
19 further materiality standard in favor of consumers);
20
21 d. *Arthur v. SLM Corporation*, 10-CV-00198-JLR (W.D. Wash.)
22 (Nationwide settlement achieving 24.15 million; final approval granted
23 in 2012);
24
25 e. *Bellows v. NCO Financial Systems, Inc.*, 07-CV-01413-W (AJB) (S.D.
26 Cal) (One of the first class action settlements under the TCPA in the
27 nation; Hyde & Swigart served as co-lead counsel; final approval
28 granted in 2009);
f. *CashCall, Inc. v. Superior Court*, 159 Cal. App. 273 (2008); (Allowing
the original plaintiff who lacked standing in a class action to conduct
pre-certification discovery of the identities of potential plaintiffs with
standing);
g. *Catala v. Resurgent Capital Servs., L.P.*, 08-CV-2401 NLS, 2010 U.S.

1 Dist. LEXIS 63501 (S.D. Cal.) (Co-lead counsel on a class settlement
2 involving the Fair Debt Collection Practices Act);

3 h. *Conner v. JPMorgan Chase Bank, et al.*, 10-CV-1284-DMS (BGS)
4 (S.D. Cal.) (finally approved for \$11,973,558; awaiting written order
5 finally approving settlement after court finally approved settlement at
6 hearing);

7 i. *Engelen v. Erin Capital Management, LLC, et al.*, No. 12-55039 (9th
8 Cir. 2013, not for publication, D.C. No.: 3:10-cv-01125-BEN-
9 RBB)(Reversing the lower court's granting of summary judgment to the
10 defendant debt collector on the basis of the bona fide error defense and
11 remanding for further proceedings);

12 j. *Edstrom v. All Servs. & Processing*, 2005 U.S. Dist. LEXIS 2773 (N.D.
13 Cal. 2005) (Numerous omissions from a letter sent by a debt collector to
14 members of a homeowners association, and a statement requiring any
15 dispute to be put in writing, violated 15 U.S.C. § 1692g(a) of the
16 FDCPA and Cal. Civ. Code §1788.17. The FDCPA required strict
17 compliance; actual confusion on debtors' part was not required);

18 k. *Fanning et al. v. HSBC Card Services, Inc. and HSBC Technology &*
19 *Services (USA), Inc.*, 12-cv-00885-JVS-RNBx (C.D. Cal 2017)
20 (reaching a class action settlement of a CIPA action in the amount of
21 \$13,000,000);

22 l. *Forsberg v. Fid. Nat'l Credit Servs.*, 2004 U.S. Dist. LEXIS 7622 (S.D.
23 Cal. 2004)(Plaintiff alleged sufficient facts to support his claim that a
24 collection company, in its initial communication, did not comply with
25 the statutory requirements for notice of validation of debts under the
26 FDCPA);

27 m. *Gehrich v. Chase bank USA, N.A.*, 1:12-CV-5510 (N.D. IL) –
28 (preliminarily approved for \$34,000,000);

- 1 n. *Geoffroy, et al. v. Washington Mutual Bank*, 484 F. Supp. 2d 1115 (S.D.
2 Cal. 2007) (Court striking down Defendant’s arbitration agreement as
3 both procedurally and substantively unconscionable);
- 4 o. *Gutierrez, et al. v. Barclays Group, et al.*, 10-CV-1012-DMS (BGS)
5 (Common fund created in the amount of \$8,262,500 based on the receipt
6 of unsolicited text messages; final approval granted in 2012);
- 7 p. *Heathman v. Portfolio Recovery Assocs., LLC*, 2013 U.S. Dist. LEXIS
8 98742 (S.D. Cal. 2013) (Holding that failing to properly list and disclose
9 the identify of the original creditor in a state collection pleading is a
10 violation of the Fair Debt Collection Practices Act under 15 U.S.C. §
11 1692e)).
- 12 q. *Hosseinzadeh v. M.R.S. Assocs.*, 387 F. Supp. 2d 1104 (C.D. Cal. 2005)
13 (Summary judgment was granted *sua sponte* in favor of a debtor where
14 debt collector violated the Fair Debt Collection Practices Act, when its
15 employees failed to disclose the debt collector’s identity and the nature
16 of its business in the messages left on the debtor’s answering machine).
17 This case has now been followed in at least four different districts
18 throughout the country.
- 19 r. *Hooker v. Sirius XM Radio Inc.*, 4:13-cv-00003-AWA-LRL (E.D.Va.
20 December 22, 2016) (finally approved TCPA class action settlement
21 with a monetary fund of \$35,000,000);
- 22 s. *In Re: Midland Credit Management, Inc., Telephone Consumer*
23 *Protection Act Litigation*, 11-md-2286-MMA (MDD) (S.D. Cal.)
24 (Counsel for a Plaintiff in the lead action, prior to the action being
25 recategorized through the multi-district litigation process);
- 26 t. *In Re: Portfolio Recovery Associates, LLC Telephone Consumer*
27 *Protection Act Litigation*, 11-md-02295-JAH (BGS) (Counsel for a
28 Plaintiff in the lead action, prior to the action being recategorized

1 through the multi-district litigation process);

2 u. *Iniguez v. The CBE Group, Inc.*, 2013 U.S. Dist. LEXIS 127066 (E.D.
3 Cal.); 13-CV-00843-JAM-AC (The court denying Defendant's motion
4 to dismiss and to strike class allegations holding that the TCPA applies
5 to any call made to a cellular telephone with an ATDS).

6 v. *Kight v. CashCall, Inc.*, 200 Cal. App. 4th 1377 (2011) (Co-lead counsel
7 on a class action involving privacy rights under Cal. Penal Code § 632 et
8 seq. Appeals court reversing the trial courts granting of Defendant's
9 motion for summary judgment after case was certified);

10 w. *Knutson v. Schwan's Home Service, Inc. et al.*, (finally approved for
11 \$2,535,280); and,

12 x. *Lemieux v. EZ Lube, Inc. et al.*, 12-cv-01791-BAS-JLB (S.D. Cal.)
13 (finally approved for \$479,364);

14 y. *Lo v. Oxnard European Motors, LLC, et al.*, 11-CV-1009-JLS-MDD
15 (S.D. Cal.) (Achieving one of the highest class member payouts in a
16 TCPA action of \$1,331.25; final approval granted in 2012);

17 z. *Malta, et al. v. Wells Fargo Home Mortgage, et al.*, 10-CV-1290-IEG
18 (BLM) (Served as co-lead counsel for a settlement class of borrowers in
19 connection with residential or automotive loans and violations of the
20 TCPA in attempts to collect on those accounts; obtained a common
21 settlement fund in the amount of \$17,100,000; final approval granted in
22 2013);

23 aa. *Marks v. Crunch San Diego, LLC*, 2018 U.S. App. LEXIS 26883 (9th
24 Cir. 2018) (vacating the district court's summary judgment on a TCPA
25 claim in a class action, and explaining the definition of an ATDS);

26 bb. *Mason v. Creditanswers*, 2008 U.S. Dist. LEXIS 68575; (Holding that a
27 forum selection clause causing a California consumer to litigate its
28 claims seems contrary to the policies advanced by certain consumer

1 protection statutes).

2 cc. *Myers v. LHR, Inc.*, 543 F.Supp.2d 1215 (2008) (Recognizing actual and
3 statutory damages in the amount of \$92,000 in a default judgment based
4 on violations of the State and Federal collection statutes);

5 dd. *Mills v. HSBC Bank Nevada, N.A.*, Case No. 12-CV-04010-SI (N.D.
6 Cal.) (Action was transferred to the Northern District of Illinois and
7 settlement was finally approved at \$39 million.)

8 ee. *Olney v. Progressive Casualty Insurance Company*, 2014 U.S. Dist.
9 LEXIS 9146 (S.D. Cal.); 13-CV-2058-GPC-NLS (Defendant's motion
10 to dismiss or in the alternative to strike the class allegations was denied
11 finding that debt collection calls were not exempt from coverage under
12 the TCPA);

13 ff. *Owings v. Hunt & Henriques, et al.*, 2010 U.S. Dist. LEXIS 91819 (S.D.
14 Cal.) (Recognizing that the Service Members Civil Relief Act applies to
15 California National Guard Members and that the debt collection
16 attorney's false declaration to the court violates the FDCPA);

17 gg. *Rose v. Bank of America Inc.*, 11-CV-02390-EJD (N.D. Cal) (National
18 TCPA action achieving a settlement of \$32 million, final approval
19 granted in August of 2014.)

20 hh. *Sarabri v. Weltman, Weinberg & Reis Co., L.P.A.*, 10-01777-AJB-NLS
21 (S.D. Cal.) (Approved as co-lead counsel and worked to obtain a
22 national TCPA class settlement where claiming class members each
23 received payment in the amount of \$70.00; final approval granted in
24 2013);

25 ii. *Sherman v. Kaiser Foundation Health Plan, Inc.*, 13-CV-0981-JAH
26 (JMA) (S.D. Cal.) (finally approved for \$5,350,000);

27 jj. *Sherman v. Yahoo!, Inc.*, 2014 U.S. Dist. LEXIS 13286; 13-CV-0041-
28 GPC-WVG (S.D. Cal.)(TCPA class action where Defendant's motion

- 1 for summary judgment was denied holding that a single call or text
2 message with the use of an ATDS may be actionable under the TCPA);
3 kk. *Sparrow v. Mazda Am. Credit*, 385 F. Supp. 2d 1063 (N.D. Cal. 2005)
4 (Court struck Defendant’s counter claim of the underlying debt in a fair
5 debt action based on lack of subject matter jurisdiction);
6 ll. *Yang v. DTS Financial Group*, 07-CV-1731-JLS (WMc) (Holding that
7 for profit debt settlement companies are covered under the FDCPA and
8 can be construed as “debt collectors” under 15 U.S.C. § 1692a(6));
9 mm. *Yates v. Allied Intl Credit Corp.*, 578 F. Supp. 2d 1251 (2008)
10 (Holding a debtors claim based on the FDCPA stemming from the filing
11 of a false police report was not subject to the litigation privilege under
12 Cal. Civ. Code § 47(b));

13 15. I have filed and litigated numerous other class actions based on the CIPA,
14 FDCPA, and TCPA in the past four years.

15 16. Many the cases listed above, which have settled, have resulted in the
16 creation of combined common funds and/or distribution to class member in
17 the tens of millions of dollars.

18 17. I was co-lead counsel in an appeal before the Ninth Circuit Court of
19 Appeals in the following matters that resulted in favor of my clients: *Marks*
20 *v. Crunch San Diego, LLC*, 2018 U.S. App. LEXIS 26883 (9th Cir. 2018);
21 *Afewerki v. Anaya Law Group*, No. 15-56510 (9th Cir. 2017); *Knutson v.*
22 *Sirius XM Radio*, No. 12-56120 (9th Cir. 2014).

23 18. I successfully argued before the Ninth Circuit Court of Appeals in a TCPA
24 matter in *Flores v. ADIR International, LLC*, No. 15-56260.

25 **A. ADDITIONAL RELEVANT TRAINING, SPEAKING/TEACHING**
26 **ENGAGEMENTS AND ASSOCIATIONS**

27 19. I have undergone extensive training in the area of consumer law. The following
28 is a list of recent training conferences I attended:

- 1 a. National Consumer Law Conference; Oakland, CA – 2003;
- 2 b. National Consumer Law Conference (FDCPA Mini-Conference);
- 3 Kansas City, MO – 2004;
- 4 c. National Consumer Law Conference; Boston, MA – 2004;
- 5 d. Five-day extensive one-on-one training with The Barry Law Office;
- 6 San Diego, CA –2005;
- 7 e. Three-day FDCPA Mini-Conference; Minneapolis, MN – 2005;
- 8 f. Four-day extensive one-on-one training with The Barry Law Office;
- 9 Minneapolis, MN – 2005;
- 10 g. Four-day National Association of Consumer Advocates Conference;
- 11 Minneapolis, MN – 2005;
- 12 h. Four-day National Consumer Law Center Conference; Nashville, TN
- 13 –2008;
- 14 i. Three-day National Consumer Law Center Conference; Portland, OR
- 15 -2008;
- 16 j. Speaker at a Three-day National Consumer Law Center Conference;
- 17 San Diego, CA - 2009;
- 18 k. Speaker ABA/JAG presentation to military service members and
- 19 counsel; MCRD, San Diego CA – 2010;
- 20 l. Speaker ABA teleconference on defending consumer credit card debt
- 21 and related issues; San Diego, CA – 2010;
- 22 m. Three-day National Consumer Law Center Conference; Seattle, WA -
- 23 2011;
- 24 n. Two-day FDCPA Mini-Conference; New Orleans; LA - 2012;
- 25 o. Two-day National Consumer Law Center Conference on the FDCPA;
- 26 Seattle, WA - 2012;
- 27 p. National Consumer Law Center Conference, National Convention;
- 28 Baltimore, MD - 2013;

- 1 q. Speaker ABA National Conference, Business Litigation Section;
- 2 Trends in Consumer Litigation; San Francisco, CA - 2013;
- 3 r. Speaker National Consumer Law Center; Nuts and Bolts of TCPA
- 4 Litigation; San Antonio, TX - 2014;
- 5 s. Speaker San Diego County Bar Association; Convergence of the
- 6 FDCPA and Consumer Bankruptcy; San Diego, CA - 2014;
- 7 t. Guest Speaker at California Western School of Law; Consumer Law
- 8 class - 2014;
- 9 u. 8th Annual Class Action Seminar; San Francisco, CA – 2014;
- 10 v. Speaker regarding class actions at the NCLC National Conference
- 11 held in Anaheim, CA in 2016.
- 12 w. Speaker regarding ethical repercussions at the NCLC National
- 13 Conference held in New Orleans, LA in 2017.
- 14

15 I declare under penalty of perjury under the laws of California and the
16 United States of America that the foregoing is true and correct, and that this
17 declaration was executed on September 16, 2019.

18
19 By: /s/ Joshua B. Swigart
20 Joshua B. Swigart, Esq.

CERTIFICATE OF SERVICE

I, Adrienne D. McEntee, hereby certify that on September 26, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Attorneys for Defendants HSBC Bank USA, National Association and PHH Mortgage Corporation

1 DATED this 26th day of September, 2019.

2 TERRELL MARSHALL LAW GROUP PLLC

3
4 By: /s/ Adrienne D. McEntee, Pro Hac Vice

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