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*One of the Attorneys for Plaintiff Sidney
Naiman and the Proposed Settlement Class*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SIDNEY NAIMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

TOTAL MERCHANT SERVICES, INC.
and QUALITY MERCHANT
SERVICES, INC.,

Defendants.

No. 4:17-cv-03806-CW

**DECLARATION OF EDWARD A.
BRODERICK IN SUPPORT OF
PLAINTIFF’S MOTION FOR ATTORNEYS’
FEES, REIMBURSEMENT OF COSTS AND
SERVICE AWARD**

Complaint Filed: July 5, 2017

DATE: April 2, 2019

TIME: 2:30 p.m.

LOCATION: 1301 Clay St., Oakland, CA 94612
Courtroom 6—2nd Floor

1 1. I make this declaration in support of Plaintiff’s Motion for Attorneys’ Fees,
2 Reimbursement of Costs, and Service Award to describe the work that I and my co-counsel have
3 done in identifying and investigating potential claims in the action, to set forth my qualifications
4 to serve as class counsel, and to state that, based on my experience, I believe the proposed
5 settlement in this case represents an excellent result for the proposed class.
6

7 2. I was involved in every stage of representing Plaintiff Sidney Naiman
8 (“Plaintiff”) in this case, from pre-trial investigation, analysis of Plaintiff’s potential claims, and
9 review of documents and discovery responses. I was involved in motion practice in the case,
10 including moving for class certification and amending the class definition. I additionally
11 participated in settlement negotiations and strategy, as well as drafting the proposed settlement
12 agreement and motion for preliminary approval.
13

14 3. My billable rate, which has been approved by multiple courts, is \$700 per hour.
15 My partner Anthony Paronich’s rate is \$450 per hour. Mr. Paronich and I have used these rates
16 in calculating our lodestar in several other nationwide class actions. *E.g.*, *Mey v. Frontier*
17 *Comm’ns Corp.*, No. 3:13-cv-1191-MPS (D. Conn. June 9, 2017) (approving an \$11,000,000
18 settlement and attorney fee of one-third that amount based on my hourly rate of \$700 and Mr.
19 Paronich’s of \$450); *Heidarpour v. Central Payment Co.*, No. 16-cv-01215 (M.D. Ga. May 4,
20 2017) (approving a \$6,500,000 settlement and attorney fee of one-third that amount based on my
21 hourly rate of \$700 and Mr. Paronich’s of \$450); *Mey v. Interstate Nat’l Dealer Servs., Inc.*, No.
22 14-01846 (N.D. Ga. June 8, 2016) (approving a \$4,200,000 settlement and attorney fee of one-
23 third that amount based on my hourly rate of \$700 and Mr. Paronich’s of \$450); *Jay Clogg*
24 *Realty Grp., Inc. v. Burger King Corp.*, No. 13-cv-00662 (D. Md. April 15, 2015) (approving a
25 \$8,500,000 settlement and attorney fee of one-third that amount based on my hourly rate of \$700
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1 and Mr. Paronich's of \$425 (he was then an associate); *Kensington Physical Therapy, Inc. v.*
2 *Jackson Therapy Partners, LLC*, No. 11-02467 (D. Md. Feb. 12, 2015) (approving a \$4,500,000
3 settlement and attorney fee of one-third that amount based on my hourly rate of \$700 and Mr.
4 Paronich's of \$425 (he was then an associate).

5 4. As is set forth in greater detail by Mr. Paronich in his declaration, my firm spent
6 580 hours on the case. I spent 143.2 hours, including an allocation of an additional 15 hours
7 through final approval, and Mr. Paronich spent 436.8 hours, including an additional 30 hours
8 through final approval. Our lodestar totals \$296,800. My firm has also incurred \$18,615.77 in
9 out of pocket expenses for deposition transcripts, photocopies, travel, and mediator fees. I am
10 sold out: I work on average over 40 hours per week and regularly turn down apparently
11 meritorious TCPA representations, including class cases.
12

13
14 5. I am an attorney duly admitted to practice in the Commonwealth of
15 Massachusetts. I am over 18 years of age. I am competent to testify and make this declaration on
16 personal knowledge.
17

18 **Qualification of Counsel**

19 6. I have extensive experience in the prosecution of class actions on behalf of
20 consumers, particularly claims under the Telephone Consumer Protection Act ("TCPA"), 47
21 U.S.C. §227. As a result, I am well aware of the significant time and resources needed to litigate
22 such actions, and my firm possesses the resources necessary to prosecute these actions
23 successfully. My firm keeps contemporaneous time records, and the rates for our attorneys and
24 personnel are commensurate with our experience and are commensurate with market rates in
25 Boston for attorneys with similar levels of experience. My hourly rate and that of my partner
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28

1 Anthony Paronich have been approved as reasonable by numerous state and federal courts in
2 approving settlements.

3 7. I am a 1993 graduate of Harvard Law School. Following graduation from law
4 school, I served as a law clerk to the Honorable Martin L.C. Feldman, United States District
5 Judge in the Eastern District of Louisiana.

6 8. Following my clerkship, from 1994 to December 1996, I was an associate in the
7 litigation department of Ropes & Gray in Boston, where I gained class action experience in the
8 defense of a securities class action, *Schaeffer v. Timberland*, in the United States District Court
9 in New Hampshire, and participated in many types of complex litigation.

10 9. From January 1997 to March 2000, I was an associate with Ellis & Rapacki, a
11 three-lawyer Boston firm focused on the representation of consumers in class actions.

12 10. In March 2000, I co-founded the firm of Shlansky & Broderick, LLP, focusing
13 my practice on complex litigation and the representation of consumers.

14 11. In 2003, I started my own law firm focusing exclusively on the litigation of
15 consumer class actions.

16 12. A sampling of other cases in which I have represented classes of consumers and
17 been appointed class counsel follows:

- 18
- 19
- 20
- 21 i. *In re General Electric Capital Corp. Bankruptcy Debtor Reaffirmation*
22 *Agreements Litig.*, (MDL Docket No. 1192) (N.D. Ill) (nationwide class action
23 challenging reaffirmation practices of General Electric Capital Corporation;
24 settlement worth estimated \$60,000,000)
- 25 ii. *Hurley v. Federated Dep't Stores, Inc.*, Civil Action No. 97-11479-NG (D. Mass.)
26 (nationwide class action challenged bankruptcy reaffirmation practices of
27 Federated Department Stores and others; \$8,000,000 recovery for class.)
- 28 iii. *Valerie Ciardi v. F. Hoffman LaRoche*, Civil Action No. 99-3244D (Middlesex
Super. Ct.) (class action pursuant to Massachusetts Consumer Protection Act,

1 M.G.L. c. 93A brought on behalf of Massachusetts consumers harmed by price-
fixing conspiracy by manufactures of vitamins; settled for \$19,600,000)

- 2
3 iv. *Shelah Feiss v. Mediaone Group, Inc*, Civil Action No. 99-CV-1170 (N.D. Ga.)
4 (multistate class action on behalf of consumers; estimated class recovery of
\$15,000,000 to \$20,000,000)
- 5 v. *Mey v. Herbalife Int'l, Inc.*, Civil Action No. 01-cv-263, (Ohio County Circuit
6 Court, West Virginia) (\$7,000,000 TCPA class action settlement granted final
7 approval on February 5, 2008 following the grant of a contested class certification
motion)
- 8 vi. *Mulhern v. MacLeod d/b/a ABC Mortgage Co.*, Civil Action No. 05-01619-BLS
9 (Norfolk Superior Court, Massachusetts) (TCPA class settlement of \$475,000
10 following the grant of a contested class certification motion, granted final
approval by the Court on July 25, 2007)
- 11 vii. *Evan Fray-Witzer, v. Metropolitan Antiques, LLC*, Suffolk Superior Court
12 (Massachusetts), Civil Action No. 02-5827-BLS. After the grant of a contested
13 class certification motion, a companion case went to the Massachusetts Supreme
14 Judicial Court, which issued a decision finding insurance coverage. *See Terra
Nova Insurance v. Fray-Witzer et. al.*, 449 Mass. 206 (2007). There was then a
15 TCPA class settlement of \$1,800,000 which was granted final approval.
- 16 viii. *Shonk Land Company, LLC v. SG Sales Company*, Circuit Court of Kanswaha
17 County (West Virginia), Civil Action No. 07-C-1800 TCPA class settlement for
\$2,450,000, final approval granted in September of 2009.
- 18 ix. *Mann & Company, P.C. v. C-Tech Industries, Inc.*, USDC, D. Mass., Civil Action
19 No. 1:08-CV-11312-RGS, TCPA class settlement of \$1,000,000, final approval
20 granted in January of 2010.
- 21 x. *Evan Fray Witzer v. Olde Stone Land Survey Company, Inc.*, Suffolk Superior
22 Court (Massachusetts), Civil Action No. 08-04165. TCPA class settlement
\$1,300,000 granted final approval on February 3, 2011.
- 23
24 xi. *Milford & Ford Associates, Inc. and D. Michael Collins vs. Cell-Tek, LLC*,
25 USDC, D. Mass., Civil Action No. 1:09-cv-11261-DPW. TCPA class settlement
of \$1,800,000, final approval granted August 17, 2011.
- 26
27 xii. *Collins v. Locks & Keys of Woburn, Inc.*, Suffolk Superior Court
28 (Massachusetts), Civil Action No. 07-4207-BLS2, TCPA class settlement of
\$2,000,000 following the granting of a contested class certification motion,

1 granted final approval on December 14, 2011.

- 2 xiii. *Brey Corp t/a Hobby Works v. Life Time Pavers, Inc.*, Circuit Court for
3 Montgomery County (Maryland), Civil Action No. 349410-V, TCPA class
4 settlement of \$1,575,000 granted final approval in March of 2012.
- 5 xiv. *Collins, et al v. ACS, Inc. et al*, USDC, D. Mass., Civil Action No. 10-CV-11912,
6 TCPA class settlement \$1,875,000 granted final approval on September 25, 2012.
- 7 xv. *Desai and Charvat v. ADT Security Services, Inc.*, USDC, ND. Ill., Civil Action
8 No. 11-CV-1925, TCPA class settlement of \$15,000,000 granted final approval
9 on June 21, 2013.
- 10 xvi. *Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC*, USDC, D.
11 MD, Civil Action No. 11-CV-02467, TCPA class settlement of \$4,500,000
12 granted final approval on February 12, 2015.
- 13 xvii. *Jay Clogg Realty Group, Inc. v. Burger King Corporation*, USDC, D. MD., Civil
14 Action No. 13-cv-00662, TCPA class settlement of \$8,500,000 granted final
15 approval on April 15, 2015.
- 16 xviii. *Charvat v. AEP Energy, Inc.*, USDC, ND. Ill., 1:14-cv-03121, TCPA class
17 settlement of \$6,000,000 granted final approval on September 28, 2015.
- 18 xix. *Mey v. Interstate National Dealer Services, Inc.*, USDC, ND. Ga., 1:14-cv-01846-
19 ELR, TCPA class settlement of \$4,200,000 granted final approval on June 8,
20 2016.
- 21 xx. *Philip Charvat and Ken Johansen v. National Guardian Life Insurance Company*,
22 USDC, W.D. Wi., 15-cv-43-JDP, TCPA class settlement for \$1,500,000 granted
23 final approval on August 4, 2016.
- 24 xxi. *Bull v. US Coachways, Inc.*, USDC, ND. Ill., 1:14-cv-05789, TCPA class
25 settlement finally approved on November 11, 2016 with an agreement for
26 judgment in the amount of \$49,932,375 and an assignment of rights against
27 defendant's insurance carrier.
- 28 xxii. *Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC, et al.*,
USDC, ND. Ill., 1:13-cv-00042, TCPA class settlement of \$2,150,000 was
granted final approval on December 1, 2016 with one of three defendants, and an

1 assignment of rights against defendant's insurance carrier. Second settlement on
2 behalf of class against two remaining defendants of \$3,300,000 granted on
3 September 25, 2018.

4 xxiii. *Smith v. State Farm Mut. Auto. Ins. Co., et. al.*, USDC, ND. Ill., 1:13-cv-02018,
5 TCPA class settlement of \$7,000,000.00 granted final approval on December 8,
6 2016.

7 xxiv. *Mey v. Frontier Communications Corporation*, USDC, D. Conn., 3:13-cv-1191-
8 MPS, a TCPA class settlement of \$11,000,000 granted final approval on June 2,
9 2017.

10 xxv. *Biringer v. First Family Insurance, Inc.*, USDC, N.D. Fla., a TCPA class
11 settlement of \$2,900,000 granted final approval on April 24, 2017.

12 xxvi. *Abramson v. Alpha Gas and Electric, LLC*, USDC, S.D.N.Y., 7:15-cv-05299-
13 KMK, a TCPA class settlement of \$1,100,000 granted final approval on May 3,
14 2017.

15 xxvii. *Heidarpour v. Central Payment Co.*, USDC, M.D. Ga., 16-cv-01215, a TCPA
16 class settlement of \$6,500,000 granted final approval on May 4, 2017.

17 xxviii. *Abante Rooter and Plumbing, Inc. v. New York Life Ins. Co.*, USDC, S.D.N.Y.,
18 1:16-cv-03588-BCM, a TCPA class settlement of \$3,250,000 granted final
19 approval on February 27, 2018.

20 xxix. *Abramson v. CWS Apartment Home, LLC*, USDC, WD. Tex., 16-cv-01215, a
21 TCPA class settlement of \$368,000 granted final approval on May 19, 2017.

22 xxx. *Thomas Krakauer v. Dish Network, L.L.C.*, USDC MDNC, Civil Action No. 1:14-
23 CV-333 on September 9, 2015. Following a contested class certification motion,
24 this case went to trial in January of 2017 returning a verdict of \$20,446,400. On
25 May 22, 2017, this amount was trebled by the Court after finding that Dish
26 Network's violations were "willful or knowing", for a revised damages award of
27 \$61,339,200. (Dkt. No. 338).

28 xxxi. *Mey v. Got Warranty, Inc., et. al.*, USDC, NDWV., 5:15-cv-00101-JPB-JES, a
TCPA class settlement of \$650,000 granted final approval on July 26, 2017.

xxxii. *Mey v. Patriot Payment Group, LLC*, USDC, NDWV., 5:15-cv-00027-JPB-JES, a

TCPA class settlement of \$3,700,000 granted final approval on July 26, 2017.

xxxiii. *Charvat and Wheeler v. Plymouth Rock Energy, LLC, et al*, USDC, EDNY, 2:15-cv-04106-JMA-SIL, a TCPA class settlement of \$1,675,000 granted final approval on July 31, 2018.

xxxiv. *Mey v. Venture Data, LLC and Public Opinion Strategies*, USDC, NDWV, 5:14-cv-123. Final approval of TCPA settlement granted on September 8, 2018.

xxxv. *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.

SIGNED UNDER PENALTIES OF PERJURY THIS 13TH DAY OF DECEMBER, 2018.

/s/ Edward A. Broderick

Edward A. Broderick