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

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

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

15 Plaintiff,

16 v.

17 TOTAL MERCHANT SERVICES, INC.  
18 and QUALITY MERCHANT  
19 SERVICES, INC.,

20 Defendants.

No. 4:17-cv-03806-CW

**DECLARATION OF ANTHONY I.  
PARONICH 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 the bases of my  
4 hourly rate, and to state that based on my experience in representing classes in cases brought  
5 under 47 U.S.C. § 227, the Telephone Consumer Protection Act, the proposed settlement in this  
6 case represents an excellent result for the class. As is set forth in the motion, the result in the case  
7 far exceeds typical TCPA class settlements, providing \$149 in recovery per class member, and  
8 an expected payout of \$900 per claimant on average.

9  
10           2.       I am an attorney duly admitted to practice in the Commonwealth of  
11 Massachusetts. I am over 18 years of age. I am competent to testify and make this affidavit on  
12 personal knowledge. I have extensive experience in the prosecution of class actions on behalf of  
13 consumers, particularly claims under the TCPA.

14  
15           3.       I was involved in every stage of representing Plaintiff Sidney Naiman  
16 (“Plaintiff”) in this case, including pre-trial investigation, analysis of Plaintiff’s potential claims,  
17 analysis of the economic viability of the potential defendants, and research regarding prior  
18 complaints to governmental entities regarding telemarketing by and on behalf of the potential  
19 defendants. My firm worked on several iterations of the complaint ultimately filed in the action.  
20 My firm took lead on Rule 16 and 26 meetings and proposing a schedule for discovery and  
21 motion practice. As discovery unfolded, Plaintiff amended his complaint twice. Two of the  
22 central added parties, Quality Merchant Services and Michael Alimento, its president, filed an  
23 answer without the assistance of counsel, prompting Plaintiff to move to strike the answer of  
24 Quality Merchant Services, which, as a corporation, is not permitted to appear other than through  
25 counsel.  
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1           4.       Discovery in the action was hard fought and extensive. Unwinding the  
2 interrelationships of the various entities involved in the telemarketing required issuing subpoenas  
3 to entities and individuals in California, Illinois, Missouri and Texas to obtain calling records,  
4 understand the relationship of the defendants to each other, learn the details of their  
5 telemarketing system, and uncover information about the software employed to make the calls.  
6 Obtaining subpoena responses from reluctant witnesses and subpoena respondents involved a  
7 great deal of time and effort.  
8

9           5.       First-party discovery was similarly arduous. After moving to strike the answer of  
10 Quality Merchant Services, Plaintiff was forced to file a motion to compel discovery responses  
11 from Mr. Alimento and Quality Merchant Services, which required two court appearances and  
12 which was denied without prejudice based on the defendants' representation to Magistrate Judge  
13 Spero that production of the records sought would be made.  
14

15           6.       Plaintiff's counsel deposed the central players in the calling scheme, Michael  
16 Alimento and his son, Brian Alimento, in Chicago.  
17

18           7.       Plaintiff also had to bring a motion to compel fulsome discovery responses from  
19 defendant Total Merchant Services by way of joint letter brief. Dkt. No. 75. Plaintiff's motion  
20 was granted in part and denied in part, providing Plaintiff with more of the materials needed to  
21 build a powerful motion for class certification.  
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23           8.       In all, Plaintiff obtained production of over 60,000 records from Defendants and  
24 third-party respondents. Plaintiff's review of the records was exacting in an attempt to identify  
25 call recipients and establish Total Merchant Services's vicarious liability for the calling at issue.  
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1           9.       Plaintiff retained Anya Verkhovskaya, President of the Class Experts Group, LLC  
2 to analyze calling data and to opine on the number of telemarketing calls placed to cellular  
3 telephones by Quality.

4           10.       On July 10, 2018, Plaintiff moved for class certification, supported by 18 exhibits  
5 and 4 declarations. Dkt. Nos. 80, 82. Much of the written discovery in the case had been  
6 designated confidential by Defendants, requiring redaction and filing under seal.  
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8           11.       In response, Total Merchant moved for an extension of time to respond to  
9 Plaintiff's motion for class certification, asserting that Defendants' opposition to class  
10 certification was not due until November 1, 2018 under the Court's previously entered  
11 Scheduling Order. Dkt No. 89. The Court agreed with Total Merchant's interpretation. Dkt. No.  
12 90.  
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14           12.       Plaintiff's motion for class certification did, however, frame the issues between  
15 the Parties and spurred an opening for settlement talks. After discussions among counsel, the  
16 Parties agreed to mediate the case with Peter J. Grilli, Esq., in Tampa, Florida. Mr. Grilli enjoys  
17 a national reputation, particularly in the area of mediating TCPA cases.  
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19           13.       After exchanging detailed mediation statements and engaging in pre-mediation  
20 conferences with Mr. Grilli, the parties held an all-day mediation session with him. Although the  
21 Parties did not reach a conclusive deal at the mediation, significant progress was made on the  
22 parameters of a settlement.  
23

24           14.       Through continued direct negotiation between counsel, a comprehensive  
25 settlement was reached, which the Parties filed for Court approval on August 31, 2018. Dkt. 92.  
26

27           15.       The Court held a hearing on October 9, 2018, on Plaintiff's Motion for  
28 Preliminary Approval of Class Action Settlement, identified a number of changes to the

1 agreement and notice plan, and ordered Plaintiff to make a supplement submission in favor of  
2 preliminary approval. Plaintiff made his supplemental filing on November 8, 2018. (Dkt. 101.)

3 16. On November 13, 2018, the Court entered a preliminary approval order.

4 17. My firm keeps contemporaneous time records. The rates for our attorneys and  
5 personnel are commensurate with our experience and market rates in Boston for attorneys with  
6 similar levels of experience. My billable rate, which has been approved by multiple courts, is  
7 \$450 an hour. My partner Edward Broderick's rate is \$700 per hour. Mr. Broderick and I have  
8 used these rates in calculating lodestars in several other nationwide class actions. *E.g.*, *Mey v.*  
9 *Frontier Commc'ns Corp.*, No. 3:13-cv-1191-MPS (D. Conn. June 9, 2017) (approving a  
10 \$11,000,000 settlement and attorney fee of one-third that amount based on my hourly rate of  
11 \$450 and Mr. Broderick's of \$700); *Heidarpour v. Central Payment Co.*, No. 16-cv-01215 (M.D.  
12 Ga. May 4, 2017) (approving a \$6,500,000 settlement and attorney fee of one-third that amount  
13 based on my hourly rate of \$450 and Mr. Broderick's of \$700); *Mey v. Interstate Nat'l Dealer*  
14 *Servs., Inc.*, No. 14-01846 (N.D. Ga. June 8, 2016) (approving a \$4,200,000 settlement and  
15 attorney fee of one-third that amount based on my hourly rate of \$450 and Mr. Broderick's of  
16 \$700); *Jay Clogg Realty Grp., Inc. v. Burger King Corp.*, No. 13-cv-00662 (D. Md. April 15,  
17 2015) (approving a \$8,500,000 settlement and attorney fee of one-third that amount based on my  
18 then hourly rate of \$425 and Mr. Broderick's of \$700); *Kensington Physical Therapy, Inc. v.*  
19 *Jackson Therapy Partners, LLC*, No. 11-02467 (D. Md. Feb. 12, 2015) (approving a \$4,500,000  
20 settlement and attorney fee of one-third that amount based on my then hourly rate of \$425 and  
21 Mr. Broderick's of \$700).

22 18. Apart from time excluded or removed as redundant or inefficient, my firm spent  
23 580 hours on the case (including an allocation of 30 additional hours that I expect to spend  
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1 through resolution of the case in fielding class member inquiries, resolving notice and  
 2 administration issues, conducting legal research and moving for final approval). We would bill  
 3 those hours to an hourly client. I spent 436.8 hours and Mr. Broderick spent 143.2 hours  
 4 (including an allocation of 15 additional hours that he expects to spend) for total attorneys' fees  
 5 of \$296,800. My firm has also incurred \$18,615.77 in out-of-pocket expenses for deposition  
 6 transcripts, photocopies, travel, and mediator fees to date.

### 8 **Qualifications of Counsel**

9 19. I am a 2010 graduate of Suffolk Law School. In 2010, I was admitted to the Bar  
 10 in Massachusetts. Since then, I have been admitted to practice before the Federal District Court  
 11 for the District of Massachusetts. From time to time, I have appeared in other state and federal  
 12 courts *pro hac vice*. I am in good standing in every court to which I am admitted to practice.

14 20. I am a partner at Broderick & Paronich, P.C. in Boston, Massachusetts.

15 21. A sampling of other class actions in which I have represented classes of  
 16 consumers and been appointed class counsel follows:

- 18 i. Brey Corp t/a Hobby Works v. Life Time Pavers, Inc., Circuit Court for  
 19 Montgomery County (Maryland), Civil Action No. 349410-V, TCPA class  
 settlement of \$1,575,000 granted final approval in March of 2012.
- 20 ii. Collins, et al v. ACS, Inc. et al, USDC, D. Mass., Civil Action No. 10-CV-11912,  
 21 TCPA class settlement \$1,875,000 granted final approval on September 25, 2012.
- 22 iii. Desai and Charvat v. ADT Security Services, Inc., USDC, ND. Ill., Civil Action  
 23 No. 11-CV-1925, TCPA class settlement of \$15,000,000 granted final approval  
 on June 21, 2013.
- 24 iv. Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC, USDC, D.  
 25 MD, Civil Action No. 11-CV-02467, TCPA class settlement of \$4,500,000  
 granted final approval on February 12, 2015.
- 26 v. Jay Clogg Realty Group, Inc. v. Burger King Corporation, USDC, D. MD., Civil  
 27 Action No. 13-cv-00662, TCPA class settlement of \$8,500,000 granted final  
 28 approval on April 15, 2015.

- 1 vi. Charvat v. AEP Energy, Inc., USDC, ND. Ill., 1:14-cv-03121, TCPA class  
2 settlement of \$6,000,000 granted final approval on September 28, 2015.
- 3 vii. Mey v. Interstate National Dealer Services, Inc., USDC, ND. Ga., 1:14-cv-01846-  
4 ELR, TCPA class settlement of \$4,200,000 granted final approval on June 8,  
5 2016.
- 6 viii. Philip Charvat and Ken Johansen v. National Guardian Life Insurance Company,  
7 USDC, WD. Wi., 15-cv-43-JDP, TCPA class settlement for \$1,500,000 granted  
8 final approval on August 4, 2016.
- 9 ix. Bull v. US Coachways, Inc., USDC, ND. Ill., 1:14-cv-05789, TCPA class  
10 settlement finally approved on November 11, 2016 with an agreement for  
11 judgment in the amount of \$49,932,375 and an assignment of rights against  
12 defendant's insurance carrier.
- 13 x. Smith v. State Farm Mut. Auto. Ins. Co., et. al., USDC, ND. Ill., 1:13-cv-02018,  
14 TCPA class settlement of \$7,000,000.00 granted final approval on December 8,  
15 2016.
- 16 xi. Mey v. Frontier Communications Corporation, USDC, D. Ct., 3:13-cv-1191-  
17 MPS, a TCPA class settlement of \$11,000,000 granted final approval on June 2,  
18 2017.
- 19 xii. Biringer v. First Family Insurance, Inc., USDC, ND. Fla., USDC, 4:14-cv-00566-  
20 RH-CAS, a TCPA class settlement of \$2,900,000 granted final approval on April  
21 24, 2017.
- 22 xiii. Abramson v. Alpha Gas and Electric, LLC, USDC, SD. NY., 7:15-cv-05299-  
23 KMK, a TCPA class settlement of \$1,100,000 granted final approval on May 3,  
24 2017.
- 25 xiv. Heidarpour v. Central Payment Co., USDC, MD. Ga., 16-cv-01215, a TCPA class  
26 settlement of \$6,500,000 granted final approval on May 4, 2017.
- 27 xv. Abramson v. CWS Apartment Home, LLC, USDC, WD. Tex., 16-cv-01215, a  
28 TCPA class settlement of \$368,000.00 granted final approval on May 19, 2017.
- xvi. Thomas Krakauer v. Dish Network, L.L.C., USDC, MD. NC., Civil Action No.  
1:14-CV-333 on September 9, 2015. Following a contested class certification  
motion, this case went to trial in January of 2017 returning a verdict of  
\$20,446,400. On May 22, 2017, this amount was trebled by the Court after  
finding that Dish Network's violations were "willful or knowing", for a revised  
damages award of \$61,339,200. (Dkt. No. 338).
- xvii. Charvat v. Carnival Corporation & PLC, et. al., USDC, ND. Ill., 1:13-cv-00042, a  
TCPA class settlement of \$12,500,000 granted preliminary approval on July 6,

1 2017.

- 2 xviii. Mey v. Got Warranty, Inc., et. al., USDC, ND. WV., 5:15-cv-00101-JPB-JES, a  
3 TCPA class settlement of \$650,000 granted final approval on July 26, 2017.
- 4 xix. Mey v. Patriot Payment Group, LLC, USDC, ND. WV., 5:15-cv-00027-JPB-JES,  
5 TCPA class settlement of \$3,700,000 granted final approval on July 26, 2017.
- 6 xx. Abante Rooter and Plumbing, Inc. v. Birch Communications, Inc., USDC, ND  
7 Ga., 1:15-CV-03562-AT, a TCPA class settlement of \$12,000,000 granted final  
8 approval on December 14, 2017.
- 9 xxi. Mey v. Venture Data, LLC, et. al., USDC ND Wv., Civil Action No. 5:14-cv-123,  
10 a TCPA class settlement of \$2,100,000 granted final approval of granted on  
11 September 8, 2018.
- 12 xxii. Abante Rooter and Plumbing, Inc. v. New York Life Insurance Company, USDC,  
13 SD. NY., 1:16-cv-03588-BCM, a TCPA class settlement of \$3,250,000 granted  
14 final approval on February 27, 2018.
- 15 xxiii. Abante Rooter and Plumbing, Inc. v. Pivotal Payments, Inc., USDC, ND. Ca.,  
16 3:16-cv-05486-JCS, a TCPA class settlement of \$9,000,000 granted final  
17 approval on October 15, 2018.
- 18 xxiv. Allen, et. al. v. A&B Insurance and Financial, Inc., USDC, MD. Fl., 6:16-cv-  
19 01478-CEM-GJK, a TCPA class settlement of \$4,250,000 granted final approval  
20 on September 26, 2018.
- 21 xxv. Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC, et al.,  
22 USDC, ND. Ill., 1:13-cv-00042, TCPA class settlement of \$2,150,000 was  
23 granted final approval on December 1, 2016 with one of three defendants, and an  
24 assignment of rights against defendant's insurance carrier. Second settlement on  
25 behalf of class against two remaining defendants of \$3,300,000 granted final  
26 approval on September 25, 2018.
- 27 xxvi. In re Monitronics International, Inc., USDC, ND. WV., 1:13-md-02493-JPB-JES,  
28 a TCPA class settlement of \$28,000,000 granted final approval on June 12,  
2018.
- xxvii. Wheeler, et. al. v. Plymouth Rock Energy, LLC, USDC, EDNY, 2:15-cv-04106-  
JMA-SIL, a \$1,675,000 TCPA class settlement of granted final approval on July  
31, 2018.

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

/s/ Anthony I. Paronich



Anthony I. Paronich

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