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7 [Additional Counsel Appear on Signature Page]

8
9 *Attorneys for Plaintiff Cory Horton*

10 UNITED STATES DISTRICT COURT
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12 CORY HORTON, on behalf of himself
 13 and all others similarly situated,

14 Plaintiff,

15 v.

16 CAVALRY PORTFOLIO SERVICES,
 17 LLC,

18 Defendant.

NO. 3:16-cv-00211-JAH-WVG

**DECLARATION OF ADRIENNE
 D. McENTEE IN SUPPORT OF
 PLAINTIFFS’ MOTION FOR
 PRELIMINARY APPROVAL OF
 CLASS ACTION SETTLEMENT**

Complaint Filed: February 7, 2013

DEMAND FOR JURY TRIAL

Honorable John A. Houston

DATE: March 23, 2020

TIME: 2:30 p.m.

COURTROOM: 13B (13th Floor)

1 KEVIN KREJCI, on behalf of himself
2 and all others similarly situated,

NO. 3:16-cv-00211-JAH-WVG

3 Plaintiff,

4 v.

5 CAVALRY PORTFOLIO SERVICES,
6 LLC,

7 Defendant.
8

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10 I, Adrienne D. McEntee, hereby declare as follows:

11 1. I am a member of the law firm of Terrell Marshall Law Group PLLC
12 (“TMLG”), counsel of record for Plaintiffs in this matter. I am admitted to
13 practice before this Court and am a member in good standing of the bar of the
14 state of Washington. I respectfully submit this declaration in support of Plaintiffs’
15 Motion for Preliminary Approval of Class Action Settlement. Except as otherwise
16 noted, I have personal knowledge of the facts set forth in this declaration and
17 could testify competently to them if called upon to do so.

18 2. TMLG is a law firm in Seattle, Washington, that focuses on complex
19 civil and commercial litigation with an emphasis on consumer protection, product
20 defect, civil rights, and wage and hour cases. TMLG has been appointed lead or
21 co-lead counsel representing multi-state and nationwide classes in state and
22 federal court in Washington and throughout the United States. Founded in 2008,
23 the attorneys at TMLG have represented scores of classes, tried class actions in
24 state and federal court, and obtained hundreds of millions of dollars in monetary
25 relief for workers, consumers, and other individuals.

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28 DECLARATION OF ADRIENNE D. McENTEE IN SUPPORT OF
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1 Northern District of Illinois granted final approval the \$75
2 million settlement on February 23, 2015.

- 3 • *Borecki v. Raymours Furniture Co., Inc.*—Filed in 2017 on
4 behalf of consumers who received spam text messages on
5 their cellular telephones without their prior express consent
6 within the meaning of the Telephone Consumer Protection
7 Act, 47 U.S.C. § 227 *et seq.* The Southern District of New
8 York granted final approval of the \$4.25 million settlement
9 on September 10, 2019.
- 10 • *Snyder v. Ocwen Loan Servicing, LLC*—Filed in 2014 on
11 behalf of consumers who received automated collection
12 telephone calls on their cellular telephones without their
13 prior express consent within the meaning of the Telephone
14 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* The
15 Northern District of Illinois granted final approval of the
16 \$21.5 million settlement on May 14, 2019.
- 17 • *Melito, et al. v. American Eagle Outfitters, Inc., et al.*—
18 Filed in 2014 on behalf of consumers who received spam
19 text messages on their cellular telephones without their
20 prior express consent within the meaning of the Telephone
21 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* The
22 Southern District of New York granted final approval to
23 the \$14.5 million settlement on September 11, 2017, which
24 the United States Court of Appeals for the Second Circuit
25 affirmed on April 30, 2019.
- 26 • *In re Monitronics International, Inc. Telephone Consumer
27 Protection Act Litigation*—Filed in 2011 on behalf
28 consumers who received automated, prerecorded
solicitation telephone calls on their residential and business
telephones without their prior express consent within the
meaning of the Telephone Consumer Protection Act, 47
U.S.C. § 227 *et seq.*, the Washington Automatic Dialing
and Announcing Device statute, RCW 80.36.400, and the
Washington Consumer Protection Act, RCW 19.86 *et seq.*
TMLG served as co-lead counsel in the multidistrict
litigation. The Northern District of West Virginia granted

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1 final approval of the \$28 million settlement on June 12,
2 2018.

- 3 • *Abante Rooter and Plumbing, Inc. v. Pivotal Payments*
4 *Inc.*— Filed in 2016 on behalf of small businesses that
5 received automated solicitation telephone calls to their cell
6 phones without their prior express consent within the
7 meaning of the Telephone Consumer Protection Act, 47
8 U.S.C. § 227 *et seq.* The Northern District of California
9 granted final approval of the \$9 million settlement on
10 October 15, 2018.
- 11 • *Wilkins, et al. v. HSBC Bank Nevada, N.A., et al.*—Filed in
12 2014 on behalf of individuals who received prerecorded
13 calls using an automatic dialing system without their prior
14 consent within the meaning of the Telephone Consumer
15 Protection Act, 47 U.S.C. § 227 *et seq.* The Northern
16 District of Illinois granted final approval of the \$39.975
17 million settlement on March 17, 2015.

18 5. Additional information about class actions litigated by TMLG is
19 available on our website www.terrellmarshall.com.

20 **Qualifications of Other TMLG Attorneys**

21 6. Beth E. Terrell is a founding member of TMLG who practices
22 complex litigation, including the prosecution of consumer, defective product, and
23 wage and hour class actions. Ms. Terrell has served as co-lead counsel on
24 numerous multi-state and nationwide class actions. Ms. Terrell received a B.A.,
25 magna cum laude, from Gonzaga University in 1990. In 1995, Ms. Terrell
26 received her J.D. from the University of California, Davis School of Law, Order
27 of the Coif. Prior to forming TMLG in May 2008, Ms. Terrell was a member of
28 Tousley Brain Stephens PLLC. Ms. Terrell is a frequent speaker at legal
conferences on a wide variety of topics including consumer class actions,
electronic discovery, ethics, and gender equity in the legal profession. Ms. Terrell

1 has been awarded an “AV” rating in Martindale Hubble by her peers. Ms. Terrell
2 has been repeatedly named to the annual Washington Super Lawyers list. She has
3 also been named to the Top 100 Washington Super Lawyers list and the Top 50
4 Women Super Lawyers list.

5 7. Jennifer Rust Murray is a founding member of TMLG. Ms. Murray
6 graduated from the University of Washington School of Law in 2005 where she
7 was a member of the Washington Law Review. Ms. Murray’s law review article
8 entitled “Proving Cause in Fact under Washington’s Consumer Protection Act:
9 The Case for a Rebuttable Presumption of Reliance” won the Carkeek prize for
10 best submission by a student author. Prior to law school, Ms. Murray earned a
11 Ph.D. in Philosophy from Emory University. Ms. Murray has been an active
12 member of the Washington State Bar Association since her admission to the bar
13 in 2005. In 2010, Ms. Murray was admitted to the Oregon State Bar. In 2011,
14 2012, 2013, 2014, and 2015, Ms. Murray was named a Washington “Rising Star”
15 by SuperLawyer Magazine. Ms. Murray focuses her practice on complex
16 commercial litigation with an emphasis on consumer and employment issues. She
17 has been involved in nearly every class action prosecuted by the firm.

18 8. Elizabeth A. Adams is a 2012 graduate of the UCLA School of Law,
19 where she received the Order of the Coif and served as a Comments Editor for the
20 UCLA Law Review. Ms. Adams has been an associate with TMLG since early
21 2015, and she concentrates her practice in complex litigation, including consumer
22 protection and civil rights class actions. Before joining TMLG, Ms. Adams
23 served as a law clerk to the Honorable Dean D. Pregerson, the Honorable George
24 Wu, and the Honorable John A. Kronstadt, all of the United States District Court
25 for the Central District of California.

26 **Our Work in the Litigation**

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28
DECLARATION OF ADRIENNE D. McENTEE IN SUPPORT OF
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1 completed extensive discovery and fulsome briefing on class certification and
2 summary judgment. All settlement negotiations have been non-collusive and at
3 arm's length. Based on my experience with TCPA class actions, I strongly
4 believe the Settlement is fair, adequate, reasonable, and in the best interests of the
5 Settlement Class.

6 17. The parties finalized the terms of the Settlement Agreement on
7 February 20, 2020. A true and correct copy of the fully executed Settlement
8 Agreement is attached here as Exhibit 1.

9 **Notice and Estimated Awards**

10 18. After soliciting and reviewing bids, counsel propose to retain JND as
11 the Class Administrator, subject to Court approval. JND estimates that it can
12 carry out the Notice Plan for \$733,843.

13 19. Counsel estimates that Settlement Class Members with Open
14 Accounts who submit valid claims for debt relief may receive debt relief awards
15 of over \$500. This estimate is based on the assumption that 5% of 674,760
16 Settlement Class Members with Open Accounts will file claims for debt relief, as
17 follows: $674,760 \text{ Open Accounts} \times 5\% = 33,738$. $\$18,000,000 / 33,738 = \533 .

18 20. Counsel estimates that Settlement Class Members who submit valid
19 claims for cash will receive approximately \$30. This is based on the assumption
20 that 10% of all Settlement Class Members, whether they have Open or Closed
21 Accounts, will submit claims for cash. Ten percent of 1,035,232 Settlement Class
22 Members is 103,523. The estimated cash award is calculated as follows:

23 \$6,150,000 Cash Fund - \$2,000,000 Proposed Fees - \$100,000 Total Possible
24 Costs - \$20,000 Proposed Incentive Awards - \$733,843 Estimated Administration
25 = \$3,296,157 Net Fund. The $\$3,296,157 \text{ Net Fund} / 103,523 \text{ Claims} = \31.84 .

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1 Plaintiffs maintain are automatic telephone dialing systems, as discussed at length
2 in the parties' cross-motions for summary judgment. But success on this score
3 was certainly not guaranteed. Cavalry denies liability for Plaintiffs' claims. And
4 the Court had not yet ruled on the parties' cross-motions for summary judgment
5 on this very issue. If the Court agreed with Cavalry that its systems are not
6 ATDSs, Plaintiffs would lose on the merits.

7 26. This risk is not unfounded. In *ACA Int'l*, 885 F.3d at 695 & 706, the
8 D.C. Circuit vacated the 2015 FCC Order addressing, among other things, the
9 definition of an "automatic telephone dialing system" under the statute. Courts
10 are still dealing with the aftermath of *ACA Int'l*. Recently, the Seventh and
11 Eleventh Circuits have interpreted it to preclude the systems that have
12 traditionally been considered autodialers. While Plaintiffs believe their position
13 should prevail under *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041, 1052 (9th
14 Cir. 2018), the question remains unanswered as to Cavalry's specific systems.

15 27. Plaintiffs had additional hurdles to clear before they would ever
16 recover any damages. Cavalry maintains that Settlement Class Members are not
17 entitled to recover because they consented to be contacted on their cell phones by
18 providing their numbers to Cavalry or to the original creditor. Consent is an
19 affirmative defense for which Cavalry carries the burden of proof. Plaintiffs
20 dispute that Cavalry could meet this burden at trial; however, if the trier of fact
21 disagreed with Plaintiffs on this legal issue, the Settlement Class would receive
22 nothing.

23 28. Cavalry's consent defense also created the risk that Plaintiffs'
24 motion to certify under Rule 23(b)(3) would not succeed. Courts in this district
25 have reached different results on consent's application to class certification.

1 Plaintiffs faced the risk that the Court would find Cavalry’s consent evidence
2 precluded class certification.

3 29. Even if Plaintiffs prevailed on summary judgment and class
4 certification, they would still need to convince a jury at trial. Next, they would
5 have to retain any favorable judgment through the appellate process. Litigating
6 this case to trial and through any appeals would be expensive and time-
7 consuming and would present risk to both parties. The Settlement, by contrast,
8 provides prompt and certain relief.

9 30. Even if Plaintiffs prevailed at trial and on any appeal, the damages
10 available under the TCPA in a class action with more than a million class
11 members are so significant that they make it hard for any company to bond an
12 appeal and satisfy the judgment. A judgment on behalf of the 1,035,232
13 Settlement Class Members identified from Cavalry’s records would total more
14 than \$500 million, which could then be subject to trebling up to \$1.5 billion.
15 Cavalry would certainly appeal any adverse verdict, which would delay any relief
16 to class members. Thus, in addition to the risk of a loss at trial, even a verdict for
17 Plaintiffs posed a substantial risk that the judgment would never be paid. Securing
18 \$24 million in benefits now, with certainty, will provide significant relief to
19 Settlement Class Members who submit valid claims.

20 I declare under penalty of perjury under the laws of the United States that
21 the foregoing is true and correct.

22 EXECUTED in Seattle, Washington, this 21st day of February, 2020.

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24
25 /s/ Adrienne D. McEntee, Pro Hac Vice
26 Adrienne D. McEntee, *Admitted Pro Hac Vice*

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CERTIFICATE OF SERVICE

I, Adrienne D. McEntee, hereby certify that on February 21, 2020, 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:

Tomio B. Narita, CSB #156576
Email: tnarita@snllp.com
Jeffrey A. Topor, CSB #195545
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Telephone: (415) 283-1000
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Attorneys for Defendant

DATED this 21st day of February, 2020.

TERRELL MARSHALL LAW GROUP PLLC

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