

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

vs.

CAVALRY PORTFOLIO SERVICES,
LLC,

Defendant.

Case No.: 1:13-cv-00307-JAH(WVG)

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

Plaintiff,

vs.

CAVALRY PORTFOLIO SERVICES,
LLC,

Defendant.

No. 3:16-cv-00211-JAH(WVG)

**DECLARATION OF SERGEI
LEMBERG IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL AND TO
CONSOLIDATE**

1 I, Sergei Lemberg, under penalty of perjury under the laws of the United States
2 of America, affirm and state as follows:

3 1. I am the principal of Lemberg Law, LLC. I am a consumer rights
4 attorney experienced in prosecuting actions under various Federal and State consumer
5 protection statutes. I am a 1997 graduate of Brandeis University with a degree in
6 Economics and a Minor in Accounting, a 2001 graduate of University of Pennsylvania
7 School of Law and now the principal of Lemberg Law L.L.C.
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10 2. I and my firm represent Kevin Krejci, Plaintiff in the related action
11 Krejci v. Cavalry Portfolio Services, LLC, 16-cv-00211-JAH-WVG. I submit this
12 declaration in support of the motion by Plaintiffs Horton and Krejci (together the
13 “Plaintiffs”) to (1) preliminary approve the class action Settlement Agreement
14 between Plaintiffs and Defendant Cavalry Portfolio Services, LLC (“Cavalry”) and (2)
15 to consolidate the Krejci and Horton actions.
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18 3. Prior to starting my own law firm, I held positions in the New York
19 offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. and practiced
20 corporate bankruptcy and reorganization law at Andrews Kurth LLP and Day Pitney
21 LLP. I have personal knowledge as to all matters set forth in this Declaration and
22 could testify to the same if called to do so.
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25 4. I am a member in good standing of the bars of Massachusetts,
26 Connecticut, Georgia, New York and Pennsylvania. I am also admitted to practice
27 before the First, Second, Third, Fifth, Seventh, Ninth and Eleventh Circuit Courts of
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1 Appeal. I am admitted to practice before the following Federal courts: the District of
2 Massachusetts, Eastern and Western Districts of Arkansas; the District of Connecticut;
3 the Northern and Middle Districts of Georgia; the Northern, Central and Southern
4 Districts of Illinois; the District of Maryland; the Eastern and Western Districts of
5 Michigan; the Eastern District of Missouri; the District of Nebraska; the Northern,
6 Southern, Eastern and Western Districts of New York; the Northern District of Ohio;
7 the Northern, Eastern and Western Districts of Oklahoma; the Western District of
8 Texas; the Eastern, Middle and Western Districts of Pennsylvania

11 5. My firm's decisions on consumer right's matters include but are not
12 limited to: *Manuel v. NRA Grp. LLC*, 722 F. App'x 141, 142 (3d Cir. 2018); *Pollard v.*
13 *Law Office of Mandy L. Spaulding*, 766 F.3d 98 (1st Cir. 2014); *Scott v. Westlake*
14 *Servs. LLC*, 2014 WL 250251 (7th Cir. Jan. 23, 2014); *Evon v. Law Offices of Sidney*
15 *Mickell*, 688 F.3d 1015 (9th Cir. 2012); *LaVigne v. First Cmty. Bancshares, Inc.*, No.
16 1:15-CV-00934-WJ-LF, 2016 WL 6305992 (D.N.M. Oct. 19, 2016); *Butto v.*
17 *Collecto, Inc*, 290 F.R.D. 372, 395-396 (E.D.N.Y. 2013); *Cerrato v. Solomon &*
18 *Solomon*, 909 F.Supp.2d 139 (D. Conn. 2012); *Zimmerman v. Portfolio Recovery*
19 *Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011); *Davis v. Diversified Consultants, Inc.*,
20 2014 WL 2944864 (D. Mass. June 27, 2014); *Hudak v. The Berkley Grp., Inc.*, 2014
21 WL 354666 (D. Conn. Jan. 23, 2014); *Zimmerman v. Portfolio Recovery Assocs.,*
22 *LLC*, 2013 WL 6508813 (S.D.N.Y. Dec. 12, 2013); *Seekamp v. It's Huge, Inc.*, 2012
23 WL 860364 (N.D.N.Y. Mar. 13, 2012).

1 6. I and my firm have been certified as class counsel, in both contested
2 proceedings and in settlement, in the following matters: *Johnson v. Comodo Grp.,*
3 *Inc.*, 2020 WL 525898 (D.N.J. Jan. 31, 2020) (class certification granted in Telephone
4 Consumer Protection Act (“TCPA”) action); *Lavigne v. First Community Bancshares,*
5 *Inc., et al.*, 2018 WL 2694457, at *5 (D.N.M. June 5, 2018) (same); *Munday v. Navy*
6 *Federal Credit Union*, ECF No. 60, 15-cv-01629 (C.D. Cal., July 14, 2017) (final
7 approval of class settlement of \$2.75MM in TCPA action); *Brown v. Rita’s Water Ice*
8 *Franchise Co. LLC*, No. CV 15-3509, 2017 WL 1021025, at *1 (E.D. Pa. Mar. 16,
9 2017) (final approval of class settlement of \$3MM common fund in TCPA action);
10 *Duchene v. Westlake Servs., LLC*, No. 2:13-CV-01577-MRH, 2016 WL 6916734
11 (W.D. Pa. July 14, 2016) (final approval of class settlement of \$10MM common fund
12 in TCPA action); *In Re: Convergent Telephone Consumer Protection Act Litigation*,
13 ECF No. 268, 3:13-md-02478 (D. Conn., November 10, 2016) (final approval of class
14 settlement consisting of \$5.5MM common fund in TCPA action); *Oberther v.*
15 *Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Mass. July 13, 2016)
16 (Fair Debt Collection Practice Act (“FDCPA”) class action); *Zimmerman v. Portfolio*
17 *Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011) (certifying FDCPA class
18 action); *Seekamp v. It’s Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012)
19 (certifying auto fraud class action); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d
20 1015 (9th Cir. 2012) (FDCPA class action); *Butto v. Collecto, Inc.*, 290 F.R.D. 372
21 (E.D.N.Y. 2013) (certifying FDCPA class action); *Douma v. Law Offices of Mitchell*
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1 *N. Kay P.C.*, 09-cv-9957 (S.D.N.Y.) (FDCPA class action); *Walters v. Collection*
2 *Tech., Inc.*, 10-cv-02514 (S.D.N.Y.) (FDCPA class action).

3 7. I have been interviewed and asked to contribute on multiple occasions by
4 the media regarding various matters that I worked on, such as the Boston Herald,
5 NorthJersey.com, Newsweek, The Leader Herald, PatriotLedger.com, Law360, Texas
6 Lawyer, ABC News, Chanel 7 in Boston, McClatchy, AOL Autos, Connecticut Law
7 Tribune, Philly.com, the Los Angeles Times, Consumer Reports.org, Syracuse.com,
8 Daily News, Harford Advocate.com and the Boston Herald.

9 8. I have co-authored the definitive compilation of form complaints in
10 Connecticut, Connecticut Civil Complaints for Business Litigation, contributing form
11 complaints for the Lemon Law and Auto Fraud sections.

12 9. I am also the former Chair of the Consumer Law Section of the
13 Connecticut Bar Association. I held that position from 2014 to 2015. I have been a
14 guest speaker at the Professional Association for Customer Engagement conference in
15 2014 and the National Debt Collection Forum in 2016. In both instances I spoke
16 about best practices that should be or are adopted in the debt collection profession
17 from the perspective of a consumer advocate.

18 10. On February 7, 2013, my firm, then named Lemberg & Associates, LLC,
19 initiated this action on behalf of Plaintiff Cory Horton and a class of similarly situated
20 consumers against Cavalry for alleged violations of the TCPA. (Doc. No. 1). We
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1 represented Mr. Horton in this matter from filing of the case until December, 2015,
2 after which he retained new counsel at the Terrell Marshall Law Group PLLC.

3 11. During our period of representation of Mr. Horton we vigorously
4 litigated the case on behalf of Mr. Horton and his putative class for alleged violations
5 of the TCPA.
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7 12. We engaged in extensive and voluminous discovery. We secured the
8 production of, and reviewed, thousands of pages of documents regarding all issues in
9 the case: the manual for Defendant's alleged dialing systems, account records for
10 Plaintiff, account records for putative class members, pertinent agreements between
11 Defendant and third parties, class data itself. We sought third party discovery from
12 Navy Federal Credit Union regarding any claim of indebtedness as to Mr. Horton. We
13 deposed three corporate representatives of the Defendant, we deposed Defendant's
14 expert, and we took the deposition of Navy Federal Credit Union. In addition, we
15 engaged in expert discovery, defended Plaintiff's experts' depositions and defended
16 the Mr. Horton's deposition.
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18 13. We engaged in extensive motion practice concerning all facets of the
19 case. The docket shows how much active and adversarial litigation occurred and
20 includes (1) a motion for summary judgment on Cavalry's counterclaim against Mr.
21 Horton (2) Plaintiff Horton's motion for class certification (3) Cavalry's motion for
22 summary judgment on liability (3) numerous motions to strike expert opinions and (4)
23 numerous motions to compel discovery.
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1 14. We also engaged in several rounds of settlement discussions with
2 Cavalry including a full day mediation session before the Honorable Herbert B.
3 Hoffman (Ret.), on June 8, 2015.
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5 15. On January 27, 2016, my firm initiated the Krejci action on behalf of Mr.
6 Krejci and a class of similarly situated consumers against Cavalry for alleged
7 violations of the TCPA. We sought to vigorously pursue the litigation on behalf of
8 Mr. Krejci and the putative class he sought to represent.
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10 16. On February 5, 2016, the Court granted Cavalry's motion to stay all
11 proceedings pending the outcome of an appeal of the Federal Communication
12 Commission's 2015 omnibus TCPA Order, *In the Matter of Rules & Regulations*
13 *Implementing the Tel. Consumer Prot. Act of 1991* (2015 Order), 30 FCC Rcd. 7961
14 (2015).
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17 17. After the stay was lifted, the Parties to the Krejci and Horton matters
18 participated in two all-day mediations before the Honorable Leo S. Papas on June 7,
19 2019, and August 27, 2019. Both sessions were productive though unsuccessful.
20 Subsequent arm's length discussions with Judge Papas's assistance resulted in the
21 terms of a settlement agreed on November 12, 2019, and a fully executed Settlement
22 Agreement on February 20, 2020.
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25 18. The terms of the Settlement Agreement are the result of extensive
26 negotiations, which spanned years, is based on our and counsel for Horton's informed
27 and considered judgments and the extensive discovery and litigation that has taken
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1 place. The terms of the Settlement Agreement are endorsed by the Plaintiff Krejci and
2 by undersigned counsel as fair reasonable and adequate and in the best interests of the
3 Class.

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5 19. My recommendation that these terms be accepted is based on my
6 extensive familiarity with the facts and legal issues in this case. My firm has
7 expended, in the Horton and Krejci matters, approximately 2,400 hours litigating and
8 settling this case to date, with a lodestar figure of approximately \$1,200,000.00. Our
9 hard costs have been approximately \$72,000.00.

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11 20. My recommendation is also grounded in my experience in class action
12 litigation which informs my judgment that the terms of the settlement are fair and
13 reasonable. *See generally Johnson*, 2020 WL 525898; *Lavigne*, 2018 WL 2694457 at
14 *5; *Brown*, 2017 WL 1021025 at *1; *Duchene*, 2016 WL 6916734; *Butto v. Collecto*
15 *Inc.*, 290 F.R.D. 372 (E.D.N.Y. 2013); *Zimmerman v. Portfolio Recovery Associates,*
16 *LLC*, 2013 WL 1245552 (S.D.N.Y. Mar. 27, 2013); *Evon v. Law Offices of Sidney*
17 *Mickell*, 688 F.3d 1015 (9th Cir. 2012); *Seekamp v. It's Huge, Inc.*, 2012 WL 860364
18 (N.D.N.Y. Mar. 13, 2012).

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22 21. Based on the foregoing, I respectfully request the Court preliminarily
23 approve the class settlement agreement, direct notice be sent to the class and schedule
24 a fairness hearing.

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I declare under penalty of perjury that the above is true and correct.

Dated: February 21, 2020

/s/ Sergei Lemberg
Sergei Lemberg, *Pro Hac Vice*

CERTIFICATE OF SERVICE

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2 I, Adrienne D. McEntee, hereby certify that on February 21, 2020, I
3 electronically filed the foregoing with the Clerk of the Court using the CM/ECF
4 system which will send notification of such filing to the following:
5

6 Tomio B. Narita, CSB #156576
7 Email: tnarita@snllp.com
8 Jeffrey A. Topor, CSB #195545
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10 SIMMONDS & NARITA LLP
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13 Telephone: (415) 283-1000
14 Facsimile: (415) 352-2625

Attorneys for Defendant

15 DATED this 21st day of February, 2020.

16 TERRELL MARSHALL LAW GROUP PLLC

17 By: /s/ Adrienne D. McEntee, Pro Hac Vice
18 Adrienne D. McEntee, *Admitted Pro Hac Vice*
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