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8 *Attorney for Plaintiff*

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 AMYE ELBERT, on behalf of herself and all
13 others similarly situated,

14 Plaintiff,

15 v.

16 ROUNDPOINT MORTGAGE SERVICING
17 CORPORATION,

18 Defendant.

19 **Case No. 3:20-cv-00250-MMC**

20 **DECLARATION OF JAMES L.**
21 **KAUFFMAN IN SUPPORT OF**
22 **PLAINTIFF'S MOTION FOR AWARD**
23 **OF ATTORNEYS' FEES, COSTS AND**
24 **SERVICE AWARD**

25 Date: April 15, 2022

26 Time: 9:00 a.m.

27 Location: Courtroom 7 (19th Floor)
450 Golden Gate Avenue
San Francisco, CA 94102

Judge: Hon. Maxine M. Chesney

1 I, James L. Kauffman, declare:

2 1. I am a partner at Bailey & Glasser LLP, and I am admitted to practice before this Court
3 as counsel of record for Plaintiff and the Settlement Class in this case. I have personal knowledge of all
4 of the facts set forth in this Declaration unless otherwise stated, and I am competent to testify to these
5 facts if called on to do so.

6 **BAILEY & GLASSER LLP**

7 2. Bailey & Glasser LLP was founded in 1999 and has an established reputation for
8 successfully prosecuting and defending multimillion dollar cases, including complex class actions. With
9 sixteen offices across the country from Boston, MA to Oakland, CA, our lawyers routinely handle high-
10 stake litigation and other lawyers call upon our firm routinely because of our unique blend of resources
11 and trial experience.

12 3. My firm, Bailey & Glasser, has obtained millions of dollars in restitution and debt
13 forgiveness for consumers by successfully asserting state and federal consumer credit law claims on
14 their behalf. A partial listing of those cases includes the following:

- 15 • *Krakauer v. Dish Network, L.L.C.*, Case No. 1:14-cv-00333 (M.D. N.C.) (\$20.5 million jury
16 verdict in a class action trial against Dish Network, alleging Dish was liable for more than
17 51,000 telemarketing calls placed by a defunct DISH dealer to persons whose telephone
18 numbers were on the National Do Not Call Registry).
- 19 • *Tadepalli v. Uber Technologies, Inc.*, Case 3:15-cv-04348 (N.D. Cal.) (100% refunds made
20 in class action settlement for California Uber riders charged approximately \$2.2 million in
21 “airport fee tolls” which Uber did not pay to California airports).
- 22 • *Wieland v. Bring Care Home, Inc.*, C.A. No. ESCV2013-01380 (Essex County, Mass.) (class
23 action settlement for failure to pay all hours worked).
- 24 • *Thomas v. Home Credit Corp., Inc.*, 11-CVS-1116 (Vance County, N.C.) (class action
25 settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- 26 • *Desai v. Charvat*, Civil Action No. 1:11-cv-1925 (N.D. Ill.) (\$15 million TCPA class
27 settlement).
- *Roberts v. Walgreen Co., et al.*, Civil Action No. 12-C-337 (Circuit Court of Mercer County,
West Virginia) (wage payment class settlement).
- *Glover v. Bank of America, N.A.*, C.A. No. 13-40042-TSH (D. Mass.) (class action settlement
for Massachusetts borrowers regarding late fees).
- *Powers v. Santander Consumer USA, Inc.*, Civil Action No. 12-cv-11932-TSH (D. Mass.)
(consumer class action resulting in the establishment of a \$750,000 settlement fund and \$20

1 million in debt relief).

- 2 • *Pirillo v. PNC Mortgage Corp.*, Civil Action No. 11-C-751 (Circuit Court of Monongalia County, West Virginia) (consumer class action settlement).
- 3 • *Ross v. CitiFinancial Auto Ltd.*, Case No. 12-1173-TJC (M.D. Fla.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- 4 • *Morris v. Merck Sharp & Dahme Corp.*, Civil Action No. 3:11-cv-00882 (S.D. W. Va.) (wage payment class action settlement totaling \$750,000).
- 5 • *Hall v. Capital One Auto Fin., Inc.*, Case No. 08-1181 (N.D. Ohio) (\$37 million settlement on behalf of state-wide class of car owners sent allegedly flawed repossession notices).
- 6 • *Brailsford v. Jackson Hewitt, Inc.*, Case No. 06-00700 (N.D. Cal.) (\$672,000 settlement on behalf of class of California consumers).
- 7 • *Hardwick v. Rent-A-Center, Inc.*, Civil Action No. 3:06-0901 (S.D. W. Va.) (class action settlement worth more than \$5 million, alleging violations of state Consumer Goods Rental Protection Act).
- 8 • *Triplett v. NationStar Mortgage, LLC*, Civil Action No. 3:11-cv-238 (S.D. W. Va.) (loan servicing case settled for \$1.5 million).
- 9 • *Shonk v. SG Sales Co.*, Case No. 07-C-1800 (Circuit Court of Kanawha County, West Virginia) (\$2.4 million nationwide settlement of class action brought under the Telephone Consumer Protection Act).
- 10 • *Lowe v. Ford Motor Credit*, Case No. 99 CVF 15806 (Cuyahoga County, Ohio) (\$22 million settlement on behalf of state-wide class of car owners subject to flawed repossession practices).
- 11 • *Muhammad v. National City Mortgage, Inc.*, Case No. 2:07-cv-00423 (S.D. W. Va.) (\$700,000 settlement of West Virginia loan servicing class action alleging National City Bank charged late loan-payment fees in violation of state law).
- 12 • *Brailsford v. Jackson Hewitt*, Case No. C 06-00700 CW (N.D. Cal.) (class action against Jackson Hewitt, Inc. for class of California consumers who purchased the tax preparer's refund anticipation loan product, settled for \$672,000).
- 13 • *Dunlap v. Wells Fargo Financial West Virginia, Inc.*, Case No. 04-C-101 (Lincoln County, W. Va.) (predatory lending class action for over 100 West Virginia mortgage borrowers, settled for just over \$9 million, including more than \$4.9 million write down in mortgage balances, \$4.15 million in cash, and credit repair).
- 14 • *Cummins v. H & R Block, Inc.*, Case No. 03-C-134 (Kanawha County, W. Va.) (in a case litigated for five years in venues ranging from the West Virginia trial and appellate courts, to federal district courts in West Virginia and Illinois, to the United States Supreme Court, firm lawyers served as lead counsel in winning a \$62.5 million multistate class action settlement against H&R Block. The case involved first-impression claims relating to the application of West Virginia's credit-services organization statute to Block's refund anticipation loan product. Other firms across the country litigated cases against Block alleging similar claims, without success, for more than ten years. West Virginia's share of the settlement was \$32.5 million).

- 1 • *Malacky v. Huntington Nat'l Bank*, Case No. CV 03 491420 (Cuyahoga County, Ohio) (\$15 million settlement in favor of state-wide class of car owners sent flawed repossession notices).
- 2
- 3 • *Anderson v. Provident Bank*, Civil Action No. 04-C-199 (Circuit Court of Mercer County, West Virginia) (predatory mortgage lending class action settled for \$8.1 million on behalf of 140 class members).
- 4
- 5 • *Mey v. Herbalife Int'l, Inc.*, Civil Action No. 01-C-263 (Circuit Court of Ohio County, West Virginia) (\$7 million nationwide class action settlement alleging violations of the federal Telephone Consumer Protection Act).
- 6
- 7 • *Cooley v. F.N.B. Corp.*, Case No. 10010 of 2003, C.A. (Lawrence County, Penn.) (\$14 million settlement on behalf of state-wide class of car owners allegedly deprived of post-repossession disclosures).
- 8
- 9 • *Dillon v. Chase*, Civil Action No. 03-C-164-W (Circuit Court of Hancock County, West Virginia) (\$3.3 million consumer class action settlement).
- 10
- 11 • *In re Household Lending Litig.*, Case No. C 02-1240 CW (N.D. Cal.) (\$172 million settlement on behalf of nationwide class of home mortgage borrowers injured by predatory mortgage lending practices).
- 12
- 13 • *Curry v. Fairbanks Capital Corporation*, Case No. 03-10875-DPW (D. Mass.) (\$55 million settlement on behalf of nationwide class of borrowers subject to predatory loan servicing practices).
- 14
- 15 • *Deem v. Ames True Temper, Inc.*, Civil Action No. 6:10-cv-01339 (S.D. W. Va.) (\$405,000 class action settlement in an ERISA action).

EXPERIENCE

16

17 4. I am licensed and in good standing to practice law in the State of Florida, State of

18 Arkansas, and District of Columbia. I have been a member of the Arkansas Bar since 2003 after I

19 obtained my J.D. from the University of Florida Levin College of Law in December 2002. For more

20 than 18 years, I have served as class and appellate counsel in a wide variety of cases including deceptive

21 trade practices, securities fraud, ERISA, and consumer protection. I am a member of Public Justice, the

22 Florida Bar Association, the Arkansas Bar Association, and the American Association of Justice (AAJ).

23 5. I was appointed as lead or co-lead class counsel in multiple other class actions

24 challenging a loan servicer's practice of collecting Pay-to-Pay fees. These include three such cases in

25 California: *Torliatt v. Ocwen Loan Servicing, LLC et. al*, No. 3:19-cv-04303-WHO (N.D.Cal.), *Lembeck*

26 *et. al v. Arvest Central Mortgage Co.*, No. 3:20-cv-03277-vc (N.D. Cal.) (final approval of settlement

27 granted), and *Silveira v. M&T Bank*, Case No. 2:19-cv-06958-ODW (C.D. Cal.) (final approval of

settlement granted). I was also appointed class counsel in *Pierce v. Statebridge Company, LLC*, No.

1 1:20-cv-00117-WO-JLW (M.D. N.C.) (ECF# 36) (final approval of settlement granted); *Montesi v.*
 2 *Seterus, Inc.*, Case No. 50-2015-CA-010910-XXXX-MB (Fla. Cir. Ct. Palm Beach Cty.) (class
 3 certification granted; case ultimately settled on behalf of class of Florida borrowers for \$1.75 million
 4 which represented 35% of the amount collected by Seterus during the class period); *Phillips v. Caliber*
 5 *Home Loans*, No. 0:19-cv-02711 (D. Minn.) (final approval of class settlement pending); *Caldwell v.*
 6 *Freedom Mortgage Corp.*, No. 3:19-cv-02193-N (N.D. Tex.) (final approval of class settlement
 7 granted).

8 6. I am currently representing proposed class representatives in other pending class actions
 9 in courts across the country challenging the legality of the collection of Pay-to-Pay from residential
 10 borrowers. *Langston v. Gateway First Bank*, No. 5:20-cv-01902 (C.D. Cal.); *McFadden v. Nationstar*
 11 *Mortgage Co. d/b/a Mr. Cooper*, No. 1:20-cv-00166-EGS (D.D.C.); *Thomas-Lawson v. Carrington*
 12 *Mortgage Co.*, No. 1:19-cv-03567-CCB (D. Md.); *Urbina v. Freedom Mortgage Co.*, No. 1:19-cv-
 13 01471 (E.D. Cal.); *Williams v. PHH Mortgage Corp.*, No. 20-cv-04018 (S.D. Tex.); *Williams v.*
 14 *Lakeview Loan Servicing, LLC et al.*, Case No 4:20cv-01900 (S.D. Tex); and *Wilson v. Santander*
 15 *Consumer USA, Inc.*, No. 4:20-cv-00152-KGB (E.D. Ark.).

ATTORNEYS' FEES AND COSTS

17 7. Bailey & Glasser started working on this case in 2020 when it investigated and filed the
 18 original complaint in this matter.

19 8. Bailey & Glasser attorneys and paralegals spent more than 250 hours litigating this case
 20 through January 15, 2022. A summary of the hours litigated is as follows:

Name	Title	Hours	Laffey Rate	Lodestar
Attorneys				
Kauffman, James L.	Partner	78.5	\$764	\$59,974.00
Ryan, Elizabeth A.	Partner	8.3	\$919	\$7,627.70
Walburg, Todd A.	Partner	6.6	\$764	\$5,042.40
Kipnis, Patricia M.	Partner	4	\$764	\$3,056.00
Woods, Victor S.	Senior Associate	59	\$676	\$39,884.00

Name	Title	Hours	Laffey Rate	Lodestar
Littles, Britney A.	Associate	51.4	\$468	\$24,055.20
Attorney Subtotal		207.8		\$139,639.30
Paralegals				
Pierre, Vanessa K.	Paralegal	32.8	\$208	\$6,822.40
Mason, Arnold S.	Paralegal	20.8	\$208	\$4,326.40
Paralegal Subtotal		53.6		\$11,148.80
TOTAL LODESTAR		261.4		\$150,788.10

9. Attorneys and paralegals from Bailey & Glasser (“BG”) worked closely with our co-counsel Tycko & Zavareei (“TZ”). Work was divided between the firms to avoid duplication of efforts. Where possible, BG and TZ endeavored to divide work based on which firm’s attorneys had the most experience in a given area.

10. BG attorneys reviewed the detailed servicing and sub-servicing history of the Plaintiff’s loan prior to the filing of the complaint.

11. After the Complaint was filed, BG attorneys worked with TZ to divide the labor on the response to RoundPoint’s motion to dismiss. BG attorneys researched and drafted portions of the Plaintiff’s response to the motion to dismiss.

12. After the Court granted in part, and denied in part RoundPoint’s motion to dismiss with leave to replead, BG attorneys worked collaboratively with TZ to draft the amended complaint that was filed in this matter.

13. RoundPoint filed a second motion to dismiss. BG attorneys helped research and draft portions of the Plaintiff’s response to the second motion to dismiss. The Court granted in part and denied in part the second motion to dismiss.

14. BG attorneys took an active role in discovery, working with TZ on the drafting and editing the discovery requests, initial disclosures, notice of Rule 30(b)(6) deposition of RoundPoint, and attending case management conferences with the Court. With the onset of Covid-19, BG attorneys negotiated a stipulation for remote depositions with RoundPoint’s counsel.

1 15. BG attorneys reviewed hundreds of pages of documents produced by RoundPoint and
2 identified additional documents that should be produced in order to address production deficiency
3 issues related to the merits and class certification.

4 16. Throughout this case, both firms participated in the drafting and preparing of written
5 work product. BG attorneys and paralegals worked with TZ on settlement strategy and negotiations.
6 Attorneys from TZ and BG attended the mediation session with Bruce Freidman, which resulted in the
7 settlement before the Court.

8 17. BG attorneys worked collaboratively with TZ to draft the settlement agreement and
9 obtain bids from several settlement administrators. BG attorneys continued to correspond with potential
10 settlement administrators to allow an informed selection in the best interests of class members.

11 18. After the Court granted preliminary approval to the settlement, the Settlement
12 Administrator caused the notice to be mailed to all class members.

13 19. Since the distribution of the notice, BG has received approximately 20 inquiries from
14 class members and either spoke to the class member when they called or made a timely response to each
15 class member inquiry.

16 20. With TZ's consultation, BG prepared the motion for service award, attorneys' fees, and
17 costs. Each firm drafted their respective declarations.

18 21. The hours summarized above do not include additional work that will be performed
19 responding to additional class member inquiries about the settlement, finalizing and filing the attorney
20 fee petition, attending the final approval hearing, or assisting the settlement administration with issues
21 that may arise related to the distribution of the Settlement Fund.

22 22. My firm's resume detailing the experience of the attorneys who worked on this matter
23 was previously filed with the Court in support of Plaintiff's motion for preliminary approval. ECF # 78-
24 6.

25 23. Time records were kept contemporaneously. For each task performed, staff accounted for
26 their time in 1/10th of an hour (6-minute) increments or shorter, and included a brief narrative
27 description of the work performed. Staff did not "block bill."

1 24. I personally reviewed the time records and removed any timekeepers that logged less
2 than 3 hours. I also reviewed the time entries to ensure there were no duplicative or erroneous entries. I
3 removed any time entries that were not supported by detailed descriptions of the work performed.

4 25. The hourly rates shown for the attorneys at BG are the 2021-2022 rates as delineated by
5 the Adjusted Laffey Matrix (<http://www.laffeymatrix.com/>), which provides market rates for attorneys
6 working in the Washington, D.C. area. *See, e.g., DL v. Dist. of Columbia*, 924 F.3d 585 (D.C. Cir. 2019)
7 (discussing the history and basis of the Laffey matrix). Although the Adjusted Laffey Matrix is updated
8 annually, courts have awarded attorneys' fees consistent with the Adjusted Laffey Matrix in a number of
9 cases. *See, e.g., Kumar v. Salov North America Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898 (N.D.
10 Cal. July 7, 2017); *Stathakos v. Columbia Sportswear Co.*, No. 15-CV-04543-YGR, 2018 WL 1710075,
11 at *6 (N.D. Cal. Apr. 9, 2018); *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D. Ohio Aug. 7, 2018),
12 Dkt. 179; *In re Think Finance, LLC, et al.*, No. 17-bk-33964 (Bankr. N.D. Tex.); *Brown v. Transurban*
13 *USA, Inc.*, No. 1:15CV494 (JCC/MSN), 2016 WL 6909683 (E.D. Va. Sept. 29, 2016); *Small v. BOKF,*
14 *N.A.*, No. 1:13-cv-01125-REB-MJW (D. Colo.); *Soule v. Hilton Worldwide, Inc.*, No. CV 13-00652
15 ACK-RLP, 2015 WL 12827769 (D. Haw. Aug. 25, 2015); *Beck v. Test Masters Educ. Servs., Inc.*, 73 F.
16 Supp. 3d 12 (D.D.C. 2014); *see also Mancini v. Dan P. Plute, Inc.*, 358 F. App'x 886 (9th Cir. 2009);
17 *Harris et al. v. Farmers Insurance Exchange et al.*, BC579498 (Cal. Super. Ct., L.A. Cty. Aug. 30,
18 2020) (accepting Adjusted Laffey Matrix as evidence of reasonable hourly rates charged by Washington,
19 D.C. attorneys).

20 26. I have reviewed the *Laffey Matrix* and state that each of the attorneys who performed
21 work on this matter has been matched to their position in the firm and years of experience at the time
22 work was performed and the rate during the period of time work was performed in this Action, which
23 for example, reports an hourly rate of \$764 for attorneys with at least 11 years of experience and \$208
24 for paralegals. This calculation results in a lodestar for BG's attorneys and paralegals of \$150,788.10.

25 27. I personally have several hourly clients who pay me rates of \$600-900 per hour or more
26 for attorneys and \$250 per hour for paralegals of the same experience as those who performed work in
27 this matter.

1 28. In my opinion, the time expended and expenses incurred in prosecuting this action were
2 reasonable and necessary for the diligent litigation and fair resolution of this matter. The lodestar
3 reflected in the above extract does not include all of the time to be devoted to preparing for and
4 appearing at the final approval hearing, or dealing with post-hearing matters.

5 29. I anticipate that Class Counsel will devote substantial additional time to this case after the
6 date of this Declaration. I have discussed with Ms. Simplicio the work that will be needed to finalize this
7 settlement and I agree with her assessment in paragraph 37 of her Declaration.

8 30. BG also carried some of the costs in this litigation. Specifically, BG incurred \$350.75 in
9 unreimbursed case-related expenses. These expenses are entirely related to court fees, outside delivery
10 and printing. These expenses do not include any travel, meals, legal research, copying or postage costs,
11 which were expenses incurred by Class Counsel but are not sought to be reimbursed. An itemized list of
12 BG's expenses is as follows:

Expense	Amount
Court Fees	\$335.00
Outside Delivery Services	\$15.75
TOTAL	\$350.75

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18 31. I declare under penalty of perjury under the laws of California that the foregoing is true
19 and correct.

20 Executed this 21st day of January 2022 in Alexandria, VA.

21 

22 _____
23 James L. Kauffman