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Class Counsel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SHAWN ESPARZA, on behalf of
herself, and all others similarly situated,

Plaintiff,

v.

SMARTPAY LEASING, INC.,

Defendant.

Case No.: 17-cv-3421-WHA

CLASS ACTION

**DECLARATION OF RONALD A.
MARRON IN SUPPORT OF MOTION
FOR ATTORNEYS' FEES, COSTS,
AND INCENTIVE AWARD**

1 Pursuant to 28 U.S.C. § 1746, I, Ronald A. Marron, hereby declare and state as follows:

2 1. I, along with my colleagues Alexis Wood and Kas Gallucci, have been
3 appointed Class Counsel in this matter. I am a member in good standing of the State Bar
4 of California and the United States District Courts for the Northern, Central, Eastern, and
5 Southern Districts of California and of the United States Court of Appeals for the Ninth
6 Circuit.

7 2. I am entering this declaration in support of Plaintiff's Memorandum of Law
8 in Support of Motion for Approval of Attorneys' Fees, Expenses, and Incentive Award. I
9 make this Declaration based on personal knowledge and if called to testify, I could and
10 would competently testify to the matters contained herein.

11 3. I have practiced civil litigation for over twenty-five (25) years. Approximately
12 twenty-four (24) years ago, I started my own law firm with an emphasis in consumer fraud.
13 Over the years, I have acquired extensive experience in class actions and other complex
14 litigation and have obtained large settlements as lead counsel and co-lead counsel. I have
15 devoted part of my practice to the area of the Telephone Consumer Protection Act.

16 4. I, along with my Senior Associates, Alexis M. Wood and Kas L. Gallucci,
17 were primarily responsible for litigating this case. It is my firm's practice to staff cases
18 and assign work to attorneys based on the needs of the case. Said differently, if a Partners
19 participation in any given task is not necessary, an Associate will handle the work, for
20 Partner review. In this case, SmartPay mounted its defense with at least one Partner and
21 one Associate at all hearings, meet and confers, depositions, mediations, etc., and in some
22 instances, in-house counsel was also present. Further, toward the end of the case, while
23 the Parties were gearing up for trial, SmartPay staffed its defense team with two Partners
24 from two well-respected firms (Simmonds & Narita and Squire Patton Boggs).
25 Accordingly, and in response to SmartPay's defense strategy and staffing choices, at times
26 two attorneys were staffed on matters.

1 *Litigation and Settlement History*

2 5. Throughout the pendency of this case, Class Counsel worked diligently to
3 advance the Class’s claims and secure the exemplary relief available to the Class.
4 Beginning pre-suit, we recognized that one of the dispositive issues in the case would be
5 the fact-intensive inquiry as to whether the dialer used was an ATDS.

6 6. Accordingly, we retained an ATDS expert prior to filing the complaint and
7 integrated that expert in the process of developing and implementing Plaintiff’s discovery
8 strategy.

9 7. To implement our discovery strategy, Plaintiff was aggressive in serving
10 discovery, even when the Court limited discovery to that of the named Plaintiff only.
11 Specifically, on October 2 and 3, 2017, Plaintiff served Interrogatories, Set One and
12 Requests for Production of Documents, Set One on Defendant. On February 6, 2018,
13 Plaintiff served Requests for Production of Documents, Set Two on Defendant. On
14 February 23, 2018, plaintiff served Requests for Production of Documents, Set Three on
15 Defendant. Defendant responded to each of these sets, including fully responding to some
16 discovery requests following a motion to compel hearing before the Honorable Judge
17 Alsup.

18 8. In response to Plaintiff’s Requests for Documents, Defendant produced nearly
19 2,000 documents and/or folders. A bulk of the documents produced by Defendant were
20 relative to the complex coding used by SmartPay to send the text messages. Counsel’s
21 review of these documents were very time consuming as each line of code needed to be
22 carefully analyzed by Counsel in preparation of depositions, expert issues and trial.

23 9. Plaintiff also issued Subpoenas to Twilio, Inc., the text message platform in
24 2017 for documents and in 2019 for deposition testimony in preparation for trial. Twilio
25 did not initially respond to Plaintiff’s subpoena for documents, which necessitated a meet
26 and confer with Twilio’s counsel. After a lengthy meet and confer, Twilio produced certain
27 documents and further directed Plaintiff’s counsel to publicly available documents on its
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1 website and blogs. As a result of these meet and confers (oral and in writing), Plaintiff's
2 counsel was able to obtain necessary information to direct Defendant on how to obtain
3 STOP messages and text messages sent and received in general. This was the initial turning
4 point in the case as Defendant initially denied having received any STOP messages from
5 Plaintiff.

6 10. In order to provide Plaintiff's Expert with the documents and information
7 necessary to opine on Defendant's dialing equipment, the number of text messages sent
8 and the unique number of text message recipients, it was necessary for all of the above
9 discovery to be obtained. Plaintiff's Expert Report was served on Defendant on February
10 1, 2019.

11 11. In preparation for trial, Plaintiff served additional discovery, however, due to
12 the settlement Defendant did not respond to the discovery. Specifically, on June 19, 2019,
13 Plaintiff served Requests for Production of Documents, Set Four, and Interrogatories, Set
14 Two, on Defendant. On July 3, 2019 and July 9, 2019 Plaintiff served Requests for
15 Admissions, Sets One and Two, respectively on Defendant.

16 12. Defendant also served discovery on Plaintiff, including Interrogatories,
17 Requests for Production of Documents and Requests for Admissions on January 19, 2018.
18 Plaintiff responded to Defendant's discovery on February 20, 2018 and produced
19 Plaintiff's documents. Plaintiff also supplemented her discovery responses on March 22,
20 2018. Plaintiff additionally sat for a deposition, which Alexis Wood defended.

21 13. Class Counsel also took four depositions of SmartPay persons most
22 knowledgeable. Counsel served a 30(b)(6) notice, and in response Defendant designated
23 a few employees that would be prepared to testify as to the agreed topics. Plaintiff's
24 counsel took the depositions of Jonathan Li, Nick Whitson, Paul Cathy, each of which had
25 knowledge regarding the text messages sent, STOP messages, and the coding used by
26 SmartPay on Twilio's platform. For each of these deposition my Senior Associate, Kas
27 Gallucci, flew up to San Francisco to take the depositions, returning to San Diego each
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1 evening. It was important to be in person with the deponents as coding questions can
2 become technical, and many documents were used during the depositions. Unfortunately,
3 at the conclusion of the third technical deposition, a deponent admitted that some of the
4 coding produced was not from the proper time period, despite assuring counsel it was
5 during prior depositions. Thus, should the case have proceeded forward, additional
6 depositions of these three deponents and one more (Duc Phan) would have been necessary.
7 Counsel also took the deposition of CEO Winnie Lai, who was generally designated by
8 SmartPay as the 30(b)(6) witness. My two Senior Associates, Alexis M. Wood and Kas L.
9 Gallucci, were responsible for taking this all day deposition. As many of these depositions
10 took place during a short two week time period, it was important for two attorneys to hear
11 this important 30(b)(6) testimony live. Defendant's retained counsel, Jeff Topor, as well
12 as SmartPay's in-house counsel was present during the 30(b)(6) deposition.

13 14. In addition to extensive discovery, Class Counsel filed or defended against
14 many motions, more than typically seen in TCPA class actions. Initially Defendant filed a
15 motion to compel arbitration, which after full briefing and oral argument, was denied by
16 the Court. Thereafter, Defendant filed an Appeal to the Ninth Circuit and a motion to stay
17 the case pending resolution of the appeal. Judge Alsup denied the motion to stay and
18 discovery commenced. In April 2018, Plaintiff brought a discovery dispute to the Court's
19 attention, which was resolved in part in Plaintiff's favor. Following resolution, Defendant
20 file a motion for leave to file for reconsideration, which Plaintiff opposed, and the Court
21 ultimately denied. Thereafter, Plaintiff filed her motion for class certification, which
22 Defendant opposed and also filed an additional motion to stay. Ultimately, after Plaintiff's
23 succeed on the appeal, the Court granted Plaintiff's motion for class certification, and the
24 case proceeded to the notice stage.

25 15. After the Class was certified, the Plaintiff served on Defendant a lengthy
26 settlement demand posturing her view and worth of the case. Shortly thereafter, the Parties
27 proceeded to schedule a mediation session with Judge Leo S. Papas, Ret., of Judicate West.
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1 In addition to engaging in preliminary discussions with opposing counsel and Judge Papas,
2 the Parties prepared voluminous pre-mediation statements in advance of the session. The
3 mediation lasted a full day, and pushed into after hours, and at the end, the Parties signed
4 a memorandum of understanding (“MOU”) regarding the key terms of the settlement.

5 16. Over the next 30 days, the Parties negotiated the details of the settlement
6 agreement before finally executing it on August 13, 2019. Additionally, per the MOU,
7 Plaintiff conducted a confirmatory 30(b)(6) deposition to confirm the accuracy of the
8 number and identity of Class Members, which had been produced by Defendant during
9 discovery and supplemented prior to mediation. Further, the Parties engaged in negotiation
10 regarding the notice process and obtained quotes from various class action administrators
11 on the pricing of providing notice and subsequent claims administration.

12 17. Once the agreement was executed, Class Counsel prepared and submitted the
13 preliminary approval papers and worked cooperatively with Defendant’s counsel. Since
14 then, my firm has continued to work with Heffler to ensure that the notice process
15 proceeded without disruption.

16 18. In accordance with the court’s preliminary approval order, my firm,
17 defendant’s counsel, and Heffler began the work necessary to effectuate the notice plan as
18 soon as they were able after entry of preliminary approval. This involved a reverse lookup
19 process to identify addresses associated with historical cell phone subscription records.
20 This process, of course, was in addition to the Long Form Notice contemplated by the
21 settlement agreement and the preliminary approval order. My firm continues to work with
22 Heffler to ensure that the notice process proceeds without disruption.

23 19. To date, not a single objection or request for exclusion has been lodged.
24 **Class counsel’s experience and the work required to achieve the beneficial**
25 **settlement**

26 20. Attached hereto as Exhibit 1 is a true and accurate copy of my firm’s resume.
27 As shown in Exhibit 1, my firm has extensive experience in prosecuting class actions and
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1 other complex litigation of similar nature, scope, and complexity. Further, my firm has
2 intimate knowledge of the law in the field of consumer privacy and TCPA litigation.

3 21. Based on my experience, I believe that Plaintiff had a strong chance of
4 succeeding at summary judgment or trial. However, SmartPay has steadfastly maintained
5 that it would defeat Plaintiff's claims on the merits. Additionally, if the case proceeded to
6 trial, other roadblocks—such as additional discovery and procurement of additional expert
7 discovery—would stand in the way of ultimate recovery.

8 22. After balancing the strength of the Class's claims against the factual and legal
9 obstacles remaining, including ability to pay, Plaintiff and Class Counsel have concluded
10 that accepting the relief afforded by the proposed settlement was in the best interest of the
11 Class.

12 23. To realize the settlement for the benefit of the Class, my firm was required to
13 spend substantial time and effort litigating this case without compensation. The work
14 included briefing numerous motions. We also conducted formal and informal fact and
15 expert discovery and worked substantially with a third-party administrator to review the
16 data for the Settlement.

17 24. Additionally, my firm prepared for and engaged in mediation with Judge Leo
18 Papas (ret.), along with countless follow-up arm's-length negotiations with SmartPay's
19 counsel. After agreeing on the settlement, Plaintiff's counsel also drafted a comprehensive
20 Settlement Agreement, including proposed notice documents and declarations.

21 25. Throughout the negotiations, my firm worked to ensure that the class notice
22 was as effective as possible, engaging a professional settlement administrator, Heffler
23 Claims Group, to send Direct Notice to the Class, in accordance with the Settlement
24 Agreement and the Court's Preliminary Approval Order.

25 26. The total cost for notice and administration expenses is not expected at
26 \$75,000 or less.

1 27. Although the objection or opt out deadline has not passed—it is clear that
2 there has been a significant (and positive) response from the Settlement Class, as not a
3 single person has objected or opted out.

4 ***Class Counsel's Hours And Expenses To Date***

5 28. The hours billed in this action by my firm are reasonable, reflect the intensity
6 with which issues were disputed in this case, and the amount of work necessary for this
7 litigation to culminate in the successful resolution of injunctive relief on behalf of the Class.

8 29. My firm has contributed a total of hours to this litigation, including 1,435.4
9 attorney hours and 250.2 staff hours.

10 30. I reviewed my firm's time records and made my best effort to reduce duplicate
11 billing. In addition, my firm does not use block billing and maintains contemporaneous
12 time records. As part of my review of the time records for this case, many attorney hours
13 were marked as no charge, and thus not included below.

14 31. The requested rates are as follows:

Timekeeper	Position	Hourly Rate	Total Hours	Total Amount
Ron Marron	Partner	\$785.00	183.1	\$ 143,106.50
Alexis Wood	Senior Associate	\$575.00	805.5	\$ 482,042.00
Kas Gallucci	Senior Associate	\$525.00	446.8	\$ 235,167.00
Paralegals		\$215.00	250.2	\$ 53,793.00

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21 Attached hereto as **Exhibit 2** are true and accurate copy of my firm's hours expended in
22 this case, minus any hours I removed or reduced in my discretion. We additionally, edited
23 the entries to remove attorney-client and work product privilege.

24 32. The hourly rates identified above are based on the ordinary professional
25 billing rate that we charge clients, including those that pay for legal services by the hour.
26 These rates are also the same rates submitted to the Court and approved in *Busch v.*
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1 *Bluestem Brands, Inc.*, No. 16-cv-0644 (WMW/HB), which received final approval, with
2 costs and fees approved in full, on October 11, 2019. *See* Dkt. No. 106.

3 33. Courts have recognized that my law firm's attorney's hourly rates are
4 reasonable for counsel with similar experience and expertise within the Southern California
5 area, as noted in the following examples.

6 34. On September 12, 2019, the Honorable Jose E. Martinez of the Southern
7 District of Florida approved the following hourly rates (Ronald A. Marron at \$785, Alexis
8 Wood at \$575 and Kas Gallucci at \$525) in *Medina v. Enhanced Recovery Company, LLC*,
9 No. 15-cv-14342 (S.D. Fla.).

10 35. On October 19, 2018, the Honorable William T. Lawrence of the Southern
11 District of Indiana approved the following hourly rates (Ronald A. Marron at \$745, Alexis
12 Wood at \$500, and Kas Gallucci \$475) in the case *Simms v. ExactTarget, LLC*, No. 1-14-
13 cv-737-WTL-DKL (S.D. Ind.).

14 36. On June 20, 2018, the Honorable Andrea R. Wood of the Northern District of
15 Illinois approved the following hourly rates (Ronald A. Marron at \$745, Alexis Wood at
16 \$475, Kas Gallucci at \$450), in the case *Elaine Mason v. M3 Financial Services, Inc.*, No.
17 15-cv-4194 (N.D. Cal.).

18 37. On March 26, 2018, the Honorable Marilyn Huff of the Southern District of
19 California approved the following hourly rates (Ronald A. Marron at \$745, Alexis Wood
20 at \$500, Kas Gallucci at \$475, Skye Resendes at \$475, law clerks at \$240 and paralegals
21 at \$215), in the case *Gutierrez-Rodrigues v. R.M. Galicia, Inc.*, No 16-CV-0182-H-BLM.

22 38. On October 31, 2017, the Honorable Thomas R. Allen of the Circuit Court of
23 Cook County, Illinois, approved the following hourly rates (Ronald Marron at \$745, Alexis
24 Wood at \$500, Skye Resendes at \$475, Kas Gallucci at \$450, William Richards at \$440,
25 Beth Goodman at \$440, Erin Minelli at \$440, law clerks at \$245, and legal
26 assistants/paralegals at \$215), in the case of *Thornton v. NCO Financial Systems, Inc.*, Case
27 No. 16 CH 5780.

1 39. On November 16, 2015, the Honorable Maxine M. Chesney, Senior District
2 Court Judge for the Northern District of California, approved the following hourly rates
3 (Ronald Marron at \$745, Alexis Wood at \$475, Skye Resendes at \$475, Kas Gallucci at
4 \$450, William Richards at \$440, Marshall Lurtz at \$440, Erin Minelli at \$440, law clerks
5 at \$245, and legal assistants/paralegals at \$215), in the case of *Johnson v. Triple Leaf, Inc.*,
6 Case No. 3:14-cv-01570-MMC. The Court found that the fee requested was “reasonable
7 when judged by the standards in this circuit,” and also that my firm’s attorney, law clerk
8 and staff rates were “reasonable in light of the complexity of this litigation, the work
9 performed, Class Counsel’s reputation, experience, competence, and the prevailing billing
10 rates for comparably complex work by comparably-qualified counsel in the relevant
11 market.” Dkt. 65.

12 40. On August 6, 2015, the Honorable Kenneth R. Freeman of the Superior Court
13 of California, County of Los Angeles, approved the following hourly rates for Class
14 Counsel: Ronald Marron at \$745, Skye Resendes at \$475, Alexis Wood at \$475, Kas
15 Gallucci at \$450, William Richards at \$440, Marshall Lurtz at \$440, Erin Minelli at \$440,
16 and law clerks at \$290 in the case of *Perry v. Truong Giang Corp.*, No. BC58568.

17 41. On August 7, 2015, the Honorable Brendan Linehan Shannon of the United
18 States Bankruptcy Court for the District of Delaware approved the following hourly rates
19 for Class Counsel: Ronald Marron at \$745, Skye Resendes at \$475, Alexis Wood at \$475,
20 Kas Gallucci at \$450, William Richards at \$440, Marshall Lurtz at \$440, Beth Goodman
21 at \$440, Erin Minelli at \$440, and law clerks at \$290 in the case of *In re: LEAF123, INC.*
22 (f/k/a NATROL, INC.), et al., No. 14-11446 (BLS).

23 42. On July 29, 2014, the Honorable Richard Seeborg of the Northern District of
24 California approved the following hourly rates for Class Counsel: Ronald Marron at \$715,
25 Skye Resendes at \$440, Kas Gallucci at \$400, and law clerks at \$290 in the case of *In re*
26 *Quaker Oats Litig.*, No. 5:10-cv-00502-RS (N.D. Cal.), Dkt. No. 221.

1 43. On March 13, 2014, the Honorable Gonzalo P. Curiel of the Southern District
2 of California approved my hourly rate of \$715 per hour; Ms. Resendes' rate of \$440 per
3 hour; Ms. Wood's rate of \$425 per hour; Ms. Minelli and Ms. Gallucci's rates of \$400 per
4 hour; Ms. Danielle Eisner's post-Bar law clerk rate of \$290 per hour; and \$215 per hour
5 for legal assistants in *Mason v. Heel, Inc.*, No. 3:12-cv-3056-GPC-KSC, 2014 WL 1664271
6 (S.D. Cal. Mar. 13, 2014).

7 44. On October 31, 2013, the Honorable Michael M. Anello of the Southern
8 District of California awarded me fees of \$680 per hour, Ms. Resendes fees of \$400 per
9 hour, Ms. Wood fees of \$385 per hour, Ms. Minelli fees of \$385 per hour, and Ms. Gallucci
10 fees of \$385 per hour in a homeopathic drug consumer class action case; and also approved
11 \$280 per hour for patent agent/post-Bar law clerk Danielle Eisner; \$245 per hour for
12 regular law clerks; and \$215 hourly rates for support staff such as paralegals. See also *Nigh*
13 *v. Humphreys Pharmacal Incorporated*, 3:12-cv-02714-MMA-DHB, 2013 WL 5995382
14 (S.D. Cal. Oct. 23, 2013).

15 45. On March 13, 2013, the Honorable David O. Carter of the Central District of
16 California awarded me fees of \$680 per hour, Ms. Resendes fees of \$400 per hour, and
17 former associate, Maggie Realin, fees of \$375 per hour in a dietary supplement consumer
18 fraud class action case; and also approved \$245 per hour for law clerks and \$215 hourly
19 rates for support staff such as paralegals. *Bruno v. Quten Research Inst., LLC*, No. 8:11-
20 cv-00173-DOC-E, 2013 WL 990495, at *4-5 (C.D. Cal. Mar. 13, 2013) (“Class Counsel, .
21 . . the Law Offices of Ronald A. Marron displayed competence and diligence in the
22 prosecution of this action, and their requested rates are approved as fair and reasonable.”);
23 see also *id.* at *4 (“The Court notes that, in addition to the monetary relief obtained by
24 Class Counsel for class plaintiffs, there is a high value to the injunctive relief obtained in
25 this case. New labeling practices affecting hundreds of thousands of bottles per year, over
26 ten years, bring a benefit to class consumers, the marketplace, and competitors who do not
27 mislabel their products.”).

1 46. On October 31, 2012, the Honorable John A. Houston of the Southern District
2 of California awarded me fees of \$650 per hour and Ms. Resendes fees of \$385 per hour
3 in a homeopathic drug consumer fraud class action case. *Gallucci*, 2012 WL 5359485, at
4 *9 (S.D. Cal. Oct. 31, 2012) (“The Court finds the [foregoing] hourly billing rates
5 reasonable in light of the complexity of this litigation, the work performed, Class Counsels’
6 reputation, experience, competence, and the prevailing billing rates for comparably
7 complex work by comparably-qualified counsel in the relevant market.”).

8 47. On August 21, 2012, the Honorable Thomas J. Whelan awarded me fees of
9 \$650 per hour, Ms. Resendes at \$385 per hour and Ms. Realin at \$375 per hour, in the
10 consumer dietary supplement class action of *Burton v. Ganeden*, No. 11-cv-1471 W (NLS),
11 Dkt. Nos. 52, 48, 45.

12 48. On July 9, 2012, the Honorable Marilyn L. Huff awarded me fees of \$650 per
13 hour, and approved the rates of my associate attorneys, Ms. Resendes at \$385 per hour, and
14 former associate, Maggie Realin, at \$375 per hour in the consumer food class action of *In*
15 *re Ferrero*, Case No. 3:11-cv-00205 H (KSC) (S.D. Cal.), Dkt. No. 127. Judge Huff noted
16 that the fees requested were “appropriate given the contingent nature of the case and the
17 excellent results obtained for the Class, and because no enhancement or multiplier was
18 sought above the actual amount of Class Counsel’s lodestar. The Court concludes the
19 billing rates used by Class Counsel to be justified by prior awards in similar litigation and
20 the evidence presented with their motion showing these rates are in line with prevailing
21 rates in this District.”

22 49. In March 2011, the Honorable Janis L. Sammartino awarded me fees based
23 on a discounted hourly rate of \$595. *Iorio*, 2011 U.S. Dist. LEXIS 21824, at *31 (S.D. Cal.
24 Mar. 3, 2011). Despite being of similar seniority and experience, at the request of and in
25 deference to my co-counsel, I reduced my requested rate to \$595.

