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*Attorneys for Plaintiff,*  
Lillian Franklin

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

**LILLIAN FRANKLIN,  
INDIVIDUALLY AND ON  
BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,**

Plaintiff,

v.

**WELLS FARGO BANK, N.A.,**

Defendant.

**Case No.:** 14-cv-2349 MMA (BGS)

**DECLARATION OF JOSHUA B. SWIGART IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARD FOR PLAINTIFF**

**DATE:** July 20, 2015  
**TIME:** 2:30 p.m.  
**COURTROOM:** 3A

**HON. MICHAEL M. ANELLO**

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**DECLARATION OF JOSHUA B. SWIGART, ESQ.**

I, JOSHUA B. SWIGART, declare:

1. I am one of the attorneys for the Plaintiff LILLIAN FRANKLIN (“Plaintiff”) in this action. I submit this declaration in support of the Motion for Attorneys’ Fees and Costs against Defendant WELLS FARGO BANK, N.A. (“Defendant”). I am licensed to practice law before this court and all California state courts. If called as a witness, I would competently testify to the matters herein from personal knowledge.

2. This declaration is based upon my personal knowledge, except where expressly noted otherwise.

3. I am a partner of the law firm of Hyde & Swigart, co-counsel of record for Plaintiff and I am a member in good standing of the bars of the State of California and District of Columbia. I am also admitted in every federal district in California and have handled federal litigation in Arizona, Washington, Minnesota, Tennessee and Texas. I respectfully submit this declaration in Support of Plaintiff’s Motion for Attorneys’ Fees and Costs.

**Background and Experience**

4. Since my admission to the California bar in 2003, I have been engaged exclusively in the area of consumer rights litigation, primarily in the area of fair debt collections, the defense of debt collection lawsuits, and class action litigation under the Telephone Consumer Protection Act; Fair Debt Collection Practices Act; and, various state privacy statutes.

5. Hyde & Swigart has been preliminarily confirmed as class counsel for purposes of this action and to proceed with the class action settlement. My firm, Hyde & Swigart, in which I am a principal, has litigated over 1,200 cases in the past eleven years. My firm has three offices in two states, San Diego, California, Riverside, California and Phoenix, Arizona. Hyde &

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1 Swigart has extensive experience in consumer class actions and other  
 2 complex litigation. My firm has a history of aggressive, successful  
 3 prosecution of consumer class actions, specifically under the Fair Debt  
 4 Collection Practices Act; the Telephone Consumer Protection Act; and,  
 5 various state privacy acts, including California Penal Code § 630, et seq.

6 **Experience Relevant to Class Actions**

7 6. I have filed and litigated several other class actions where my firm has  
 8 obtained favorable results for consumers; been approved as class counsel;  
 9 and, had similar petitions approved. The following is a non-exhaustive list of  
 10 other class actions which I am or have been personally involved in:

- 11 a. *Knell v. FIA Card Services, N.A.*, 12-cv-426 AJB (WVG) (S.D. Cal.)  
 12 (California class action settlement under Penal Code 632 et seq., for  
 13 claims of invasion of privacy. Settlement resulted in a common fund in  
 14 the amount of \$2,750,000; preliminarily approved on January 23, 2014;
- 15 b. *Zaw v. Nelnet, Inc.*, C 13-5788 RS (N.D. Cal.) (California class action  
 16 settlement under Penal Code 632 et seq., for claims of invasion of  
 17 privacy. Settlement resulted in a common fund in the amount of  
 18 \$1,188,110.00; finally approved on November 14, 2014;
- 19 c. *Bellows v. NCO Financial Systems, Inc.*, 07-CV-01413 W (AJB) (S.D.  
 20 Cal.) (One of the first class action settlements under the TCPA in the  
 21 nation; Hyde & Swigart served as co-lead counsel; final approval granted  
 22 in 2009);
- 23 d. *Adams v. AllianceOne, Inc.*, 08-CV-0248 JAH (S.D. Cal) (Nationwide  
 24 TCPA class settlement providing class relief of \$40 per claiming class  
 25 member resulting in over \$2,500,000 paid to claiming class members;  
 26 final approval granted in 2013);
- 27 e. *Lemieux v. Global Credit & Collection Corp.*, 08-CV-1012 IEG (POR)  
 28 (S.D. Cal.) (Co-lead counsel on a national TCPA class settlement

1 providing class recovery in the amount of \$70 for each claiming class  
2 member; final approval granted in 2011);

3 f. *Gutierrez, et al. v. Barclays Group, et al.*, 10-CV-1012 DMS (BGS)  
4 (Common fund created in the amount of \$8,262,500 based on the receipt  
5 of unsolicited text messages; final approval granted 2012);

6 g. *Knutson, et al. v. Schwan's Home Service, Inc.*, 12-CV-00964-GPC-DHB  
7 (S.D. Cal.)(Heavily contested TCPA class action; Currently serving as  
8 co-lead counsel and obtaining class certification (Sept. 2013);

9 h. *Malta, et al. v. Wells Fargo Home Mortgage, et al.*, 10-CV-1290 IEG  
10 (BLM) (Served as co-lead counsel for a settlement class of borrowers in  
11 connection with residential or automotive loans and violations of the  
12 TCPA in attempts to collect on those accounts; obtained a common  
13 settlement fund in the amount of \$17,100,000; final approval granted in  
14 2013);

15 i. *Conner v. JPMorgan Chase Bank, et al.*, 10-CV-1284 DMS (BGS) (S.D.  
16 Cal.) (Served as co-lead counsel for the settlement class of borrowers in  
17 connection with residential loans and TCPA violations stemming from  
18 the collection of those accounts; finally approved in 2015);

19 j. *In Re: Midland Credit Management, Inc., Telephone Consumer*  
20 *Protection Act Litigation*, 11-md-2286 MMA (MDD) (S.D. Cal.)  
21 (Counsel for a Plaintiff in the lead action, prior to the action being  
22 recategorized through the multi-district litigation process; still actively  
23 involved in the MDL litigation and settlement process);

24 k. *In Re: Portfolio Recovery Associates, LLC Telephone Consumer*  
25 *Protection Act Litigation*, 11-md-02295-JAH (BGS) (Counsel for a  
26 Plaintiff in the lead action, prior to the action being recategorized through  
27 the multi-district litigation process; still actively involved in the MDL  
28 litigation and settlement process);

- 1 l. *Arthur v. SLM Corporation*, 10-CV-00198 JLR (W.D. Wash.)  
 2 (Nationwide settlement achieving the then-largest monetary settlement in  
 3 the history of the TCPA: \$24.15; final approval granted in 2012)
- 4 m. *Lo v. Oxnard European Motors, LLC, et al.*, 11-CV-1009-JLS-MDD  
 5 (S.D. Cal.) (Achieving one of the highest class member payouts in a  
 6 TCPA action of \$1,331.25; final approval granted in 2012);
- 7 n. *Sarabri v. Weltman, Weinberg & Reis Co., L.P.A.*, 10-01777-AJB (NLS)  
 8 (S.D. Cal.) (Approved as co-lead counsel and worked to obtain a national  
 9 TCPA class settlement where claiming class members each received  
 10 payment in the amount of \$70.00; final approval granted in 2013);
- 11 o. *Barani v. Wells Fargo Bank, N.A.*, 12-CV-02999-GPC (KSC) (S.D. Cal.)  
 12 (Class action settlement under the TCPA for the sending of unauthorized  
 13 text messages to non-account holders in connection to wire transfers;  
 14 finally approved in 2015);
- 15 p. *Mills v. HSBC Bank Nevada, N.A.*, Case No. 12-CV-04010-SI (N.D.  
 16 Cal.);
- 17 q. *Martin v. Wells Fargo Bank, N.A.*, 12-CV-06030-SI (N.D. Cal.);
- 18 r. *Heinrichs v. Wells Fargo Bank, N.A.*, 13-CV-05434-WHA (N.D. Cal.);
- 19 s. *Hoffman v. Bank of America*, 12-cv-539 JAH (DHB) (S.D. Cal.)  
 20 (California class action settlement under Penal Code 632 et seq., for  
 21 claims of invasion of privacy. Settlement resulted in a common fund in  
 22 the amount of \$2,600,000; preliminarily approved on February 13, 2014;  
 23 and,
- 24 t. *Couser v. Comenity Bank*, 12-cv-484 MMA (BGS) (S.D. Cal.)  
 25 (California class action settlement under Penal Code 632 et seq., for  
 26 claims of invasion of privacy. Settlement resulted in a common fund in  
 27 the amount of \$8,400,000; pending final approval before this Court).

28 ///

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1 7. Many the cases listed above, which have settled, have resulted in the creation  
2 of combined common funds and/or distribution to class member in the tens of  
3 millions of dollars. The outstanding results mentioned above are a direct  
4 result of the diligence and tenacity shown by both myself and Hyde &  
5 Swigart in successfully prosecuting complex class actions.

6 **Hyde & Swigart’s Other Consumer Related Experience and Results**

7 8. Hyde & Swigart has extensive experience in other consumer related issues,  
8 including the Telephone Consumer Protection Act, the Fair Debt Collection  
9 Practices Act and other related consumer statutes. A brief summary of a non-  
10 inclusive list of notable published decisions are as follows:

- 11 a. *CashCall, Inc. v. Superior Court*, 159 Cal. App. 273 (2008); (Allowing  
12 the original plaintiff who lacked standing in a class action to conduct pre-  
13 certification discovery of the identities of potential plaintiffs with  
14 standing);
- 15 b. *Kight v. CashCall, Inc.*, 200 Cal. App. 4th 1377 (2011); (Co-lead counsel  
16 on a class action involving privacy rights under Cal. Penal Code § 632 et  
17 seq. Appeals court reversing the trial courts granting of Defendant’s  
18 motion for summary judgment after case was certified);
- 19 c. *Engelen v. Erin Capital Management, LLC*, et al., No. 12-55039 (9th Cir.  
20 2013, not for publication, D.C. No.: 3:10-cv-01125-BEN-RBB)  
21 (Reversing the lower court’s granting of summary judgment to the  
22 defendant debt collector on the basis of the bona fide error defense and  
23 remanding for further proceedings);
- 24 d. *Sherman v. Yahoo!, Inc.*, 2014 U.S. Dist. LEXIS 13286; 13-CV-0041-  
25 GPC-WVG (S.D. Cal.) (TCPA class action where Defendant’s motion  
26 for summary judgment was denied holding that a single call or text  
27 message with the use of an ATDS may be actionable under the TCPA);  
28



- 1 e. *Olney v. Progressive Casualty Insurance Company*, 2014 U.S. Dist.  
2 LEXIS 9146 (S.D. Cal.); 13-CV-2058-GPC-NLS (Defendant's motion to  
3 dismiss or in the alternative to strike the class allegations was denied  
4 finding that debt collection calls were not exempt from coverage under  
5 the TCPA);
- 6 f. *Iniguez v. The CBE Group, Inc.*, 2013 U.S. Dist. LEXIS 127066 (E.D.  
7 Cal.); 13-CV-00843-JAM-AC (The court denying Defendant's motion to  
8 dismiss and to strike class allegations holding that the TCPA applies to  
9 any call made to a cellular telephone with an ATDS).
- 10 g. *Catala v. Resurgent Capital Servs., L.P.*, 08-CV-2401 NLS, 2010 U.S.  
11 Dist. LEXIS 63501 (S.D. Cal.) (Co-lead counsel on a class settlement  
12 involving the Fair Debt Collection Practices Act);
- 13 h. *Hosseinzadeh v. M.R.S. Assocs.*, 387 F. Supp. 2d 1104 (C.D. Cal. 2005)  
14 (Summary judgment was granted *sua sponte* in favor of a debtor where  
15 debt collector violated the Fair Debt Collection Practices Act, when its  
16 employees failed to disclose the debt collector's identity and the nature of  
17 its business in the messages left on the debtor's answering machine).  
18 This case has now been followed in at least four different districts  
19 throughout the country.
- 20 i. *Edstrom v. All Servs. & Processing*, 2005 U.S. Dist. LEXIS 2773 (N.D.  
21 Cal. 2005) (Numerous omissions from a letter sent by a debt collector to  
22 members of a homeowners association, and a statement requiring any  
23 dispute to be put in writing, violated 15 U.S.C. § 1692g(a) of the FDCPA  
24 and Cal. Civ. Code §1788.17. The FDCPA required strict compliance;  
25 actual confusion on debtors' part was not required);
- 26 j. *Forsberg v. Fid. Nat'l Credit Servs.*, 2004 U.S. Dist. LEXIS 7622 (S.D.  
27 Cal. 2004) (Plaintiff alleged sufficient facts to support his claim that a  
28 collection company, in its initial communication, did not comply with the

1 statutory requirements for notice of validation of debts under the  
2 FDCPA)

3 k. *Sparrow v. Mazda Am. Credit*, 385 F. Supp. 2d 1063 (N.D. Cal. 2005)  
4 (Court struck Defendant’s counter claim of the underlying debt in a fair  
5 debt action based on lack of subject matter jurisdiction);

6 l. *Geoffroy, et al. v. Washington Mutual Bank*, 484 F. Supp. 2d 1115 (S.D.  
7 Cal. 2007) (Court striking down Defendant’s arbitration agreement as  
8 both procedurally and substantively unconscionable);

9 m. *Yang v. DTS Financial Group*, 07-CV-1731 JLS (WMC) (Holding that  
10 for profit debt settlement companies are covered under the FDCPA and  
11 can be construed as “debt collectors” under 15 U.S.C. § 1692a(6));

12 n. *Mason v. Creditanswers*, 2008 U.S. Dist. LEXIS 68575 (Holding that a  
13 forum selection clause causing a California consumer to litigate its claims  
14 seems contrary to the policies advanced by certain consumer protection  
15 statutes);

16 o. *Myers v. LHR, Inc.*, 543 F.Supp.2d 1215 (2008); (Recognizing actual and  
17 statutory damages in the amount of \$92,000 in a default judgment based  
18 on violations of the State and Federal collection statutes);

19 p. *Yates v. Allied Intl Credit Corp.*, 578 F. Supp. 2d 1251 (2008) (Holding a  
20 debtors claim based on the FDCPA stemming from the filing of a false  
21 police report was not subject to the litigation privilege under Cal. Civ.  
22 Code § 47(b));

23 q. *Owings v. Hunt & Henriques, et al.*, 2010 U.S. Dist. LEXIS 91819 (S.D.  
24 Cal.) (Recognizing that the Service Members Civil Relief Act applies to  
25 California National Guard Members and that the debt collection  
26 attorney’s false declaration the court violates the FDCPA);

27 r. *Heathman v. Portfolio Recovery Assocs., LLC*, 2013 U.S. Dist. LEXIS  
28 98742 (S.D. Cal. 2013) (Holding that failing to properly list and disclose

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1 the identify of the original creditor in a state collection pleading is a  
2 violation of the Fair Debt Collection Practices Act under 15 U.S.C. §  
3 1692e)).

4 **Additional Relevant Training, Speaking/Teaching Engagements and**  
5 **Associations**

6 9. I have undergone extensive training in the area of consumer law and the  
7 Telephone Consumer Protection Act. The following is a list of recent training  
8 conferences I attended, some of which I have presented:

- 9 a. National Consumer Law Conference; Oakland, CA – 2003;
- 10 b. National Consumer Law Conference (FDCPA Mini-Conference); Kansas  
11 City, MO – 2004;
- 12 c. National Consumer Law Conference; Boston, MA – 2004;
- 13 d. Five-day extensive one-on-one training with The Barry Law Office; San  
14 Diego, CA –2005;
- 15 e. Three-day FDCPA Mini-Conference; Minneapolis, MN – 2005;
- 16 f. Four-day extensive one-on-one training with The Barry Law Office;  
17 Minneapolis, MN – 2005;
- 18 g. Four-day National Association of Consumer Advocates Conference;  
19 Minneapolis, MN – 2005;
- 20 h. Four-day National Consumer Law Center Conference; Nashville, TN –  
21 2008;
- 22 i. Three-day National Consumer Law Center Conference; Portland, OR -  
23 2008;
- 24 j. Speaker at a Three-day National Consumer Law Center Conference; San  
25 Diego, CA - 2009;
- 26 k. Speaker ABA/JAG presentation to military service members and counsel;  
27 MCRD, San Diego CA – 2010;
- 28

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- 1 l. Speaker ABA teleconference on defending consumer credit card debt and  
2 related issues; San Diego, CA – 2010;
- 3 m. Three-day National Consumer Law Center Conference; Seattle, WA -  
4 2011;
- 5 n. Two-day FDCPA Mini-Conference; New Orleans; LA - 2012;
- 6 o. Two-day National Consumer Law Center Conference on the FDCPA;  
7 Seattle, WA - 2012;
- 8 p. National Consumer Law Center Conference, National Convention;  
9 Baltimore, MD - 2013;
- 10 q. Speaker ABA National Conference, Business Litigation Section; Trends  
11 in Consumer Litigation; San Francisco, CA - 2013;
- 12 r. Speaker National Consumer Law Center; Nuts and Bolts of TCPA  
13 Litigation; San Antonio, TX - 2014;
- 14 s. Speaker San Diego County Bar Association; Convergence of the FDCPA  
15 and Consumer Bankruptcy; San Diego, CA - 2014;
- 16 t. Guest Speaker at California Western School of Law; Consumer Law –  
17 2014; and,
- 18 u. Speaker National Association of Consumer Advocates; FDCPA & TCPA  
19 Issues; Las Vegas, NV – 2015.
- 20 10. I am a member in good standing of the following local and national  
21 associations:
  - 22 a. National Association of Consumer Advocates;
  - 23 b. Federal Bar Association, Southern District of California Chapter;
  - 24 c. San Diego County Bar Association;
  - 25 d. Riverside County Bar Association;
  - 26 e. San Bernardino County Bar Association;
  - 27 f. Enright Inns of Court (term ending May 2014);
  - 28 g. American Association for Justice.

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**Overview of Hyde & Swigart’s Efforts in this Action**

**Contingent Nature of Action**

13. There is pending in the United States District Court for the Southern District of California, a civil action entitled *Franklin v. Wells Fargo Bank, N.A.* (“Franklin Action”) wherein Plaintiff alleged that Defendant had violated the Telephone Consumer Protection Act by autodialing Plaintiff, and the class members, on their respective cellular telephones without the recipient’s prior express consent.

14. Prior to the filing of the Franklin Action, I, along with many other consumer attorneys, previously filed other TCPA class actions against Wells Fargo. In this cases, I learned valuable information regarding the business practices of Wells Fargo that ultimately lead to this strong settlement.

15. This matter required Hyde & Swigart to spend time on this litigation that could have been spent on other matters. My firm has not been paid anything for our work on these cases since they were filed. It is my opinion that law firms in such a position expect to receive a multiplier in cases such as these because of the risk taken, the extent to which firms are unable to take on other cases, the delay in getting paid and the costs we have to advance. At various times during the litigation of this class action, this lawsuit has consumed my time as well as my firm’s resources.

**Hyde & Swigart’s Lodestar**

16. Hyde & Swigart has maintained contemporaneous time records since the commencement of this action. Hyde & Swigart has worked a total of 111.2 hours in this action, with a total lodestar of \$69,139.00.<sup>1</sup>

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<sup>1</sup> The hourly rate sought and used in this lodestar calculation is \$595.

- 1 17. In addition, I worked a total of 33.2 hours on a similar action against Wells  
2 Fargo entitled *Heinrichs v. Wells Fargo Bank, N.A.*, 13-cv-5434 WHA,  
3 previously filed in the Northern District of California (the “Heinrichs  
4 Action”). My total lodestar in that action is \$19,754.00.
- 5 18. All attorneys and staff at Hyde & Swigart are instructed to maintain  
6 contemporaneous time records reflecting the time spent on this and other  
7 matters. The regular practice at Hyde & Swigart is for all attorneys and staff  
8 to keep contemporaneous time records, maintained on a daily basis, and  
9 describing tasks performed in 0.1-hour increments. Firm policy requires all  
10 staff to enter their time into an electronic timekeeping system on a daily  
11 basis. I review and audit the time on a regular basis. In addition, I have  
12 removed the time billed by our paralegals and legal assistants. Thus, I have  
13 calculated the lodestar on time incurred by attorneys only.
- 14 19. Hyde & Swigart’s lodestar will grow slightly as we continue to finalize the  
15 settlement process and close the litigation. The claims period will last for a  
16 short time after submission of this Motion for Attorneys’ Fees and Costs, and  
17 Hyde & Swigart’s commitment of time and labor to this case will continue  
18 until and beyond that date. Hyde & Swigart will continue to assist Class  
19 members with individual inquiries, will oversee the claims resolution  
20 process, and Class Counsel will help resolve Class member challenges to the  
21 result of their claims submissions. Judging by previous experiences, these  
22 responsibilities will require amount of hours of work by Class Counsel over  
23 the coming months.

#### Hyde & Swigart’s Costs

- 25 20. Hyde & Swigart maintains all books and records regarding costs expended  
26 on each case in the ordinary course of business, which books and records  
27 evidence which checks have issued on each case and/or which accounts  
28

1 payable are associated with each matter. I have reviewed the records of costs  
2 expended in this matter.

3 21. Hyde & Swigart has incurred substantial costs due to court costs, travel and  
4 mediation expenses in this action. In conferring with my co-counsel at Hyde  
5 & Swigart and the Law Office of Douglas J. Campion, I determined that our  
6 total costs for this matter are over \$15,000.00 but have agreed to reduce said  
7 costs for purposes of this settlement.

8 22. As discussed in our Motion for Attorneys' Fees and Costs, I am not seeking  
9 to collect my costs in addition to the fees demanded therein. Said costs have  
10 been included in our demand for attorneys' fees to ensure that the class  
11 members receive the maximum benefit possible.

### 12 Reasonableness of Hourly Rates

13 23. Hyde & Swigart's hourly rates are reasonable in respect to the ranges  
14 charged by comparable law firms in the State of California.<sup>2</sup>

15 24. From 2003 through present Hyde & Swigart's approved hourly rate for both  
16 attorneys and support staff has steadily increased. Different rates have been  
17 approved based on the complex or non-complex nature of the litigation. For  
18 non-complex matters, courts have regularly awarded an hourly rate for  
19 partners between \$355 - \$395.<sup>3</sup> For complex matters, Hyde & Swigart's

20 <sup>2</sup> See National Law Journal article dated December 10, 2007, detailing partners' hourly rates at  
21 many law firms across the country. Note that in the 2007 time period reflected in that article that  
22 partners at the California law firms billed out in excess of \$450 per hour. Luce, Forward,  
23 Hamilton & Scripps in San Diego at that time billed out its partners at a median hourly rate of  
24 \$475, with a low of \$325 and a high of \$725. Loeb & Loeb in Los Angeles billed its partners at  
25 a median of \$600, with a low of \$425 and a high of \$875. Manatt, Phelps & Phillips in Los  
26 Angeles billed its partners at a median rate of \$590 per hour, with a low of \$520 and a high of  
27 \$785. Fenwick & West of the Silicon Valley in Mountain View, California billed its partners at  
28 a median rate of \$600 per hour, with a low of \$500 and a high of \$775 per hour. Our three firms'  
hours hourly rates are well within the ranges reflected therein, and those rates in the article are  
from 2007, and likely have increased substantially since then.

<sup>3</sup> See *Basinger-Lopez v. Tracy Paul & Associates, et al.*, C-08-5192 SBA (N.D. Cal.) [Dkt. 14];  
*Bellows v. NCO Financial Systems, Inc.*, 07-CV-01413 W(AJB) (S.D. Cal.) [Dkt. 42]; *Dillon v.*  
*United Processing, Inc.*, 08-CV-1235 JM(NLS) (S.D. Cal.) [Dkt. 14].

1 reasonable billing rate has been approved by the Courts from \$395 - \$595.<sup>4</sup>  
 2 The hourly rate sought in this matter is \$595 per hour, based on the recent  
 3 approval fee approval in the class action settlement of *Malta v. Wells Fargo*  
 4 *Home Mortgage*, 10-CV-1290-BEN(NLS) [Dkt. 92].

5 25. While I have sought, and been approved, in the past, I am not currently  
 6 seeking reimbursement for the time my paralegals or support staff have spent  
 7 on the consolidated matters. The total lodestar is based solely on attorney  
 8 hours incurred by me.

### 9 Overview of Work Performed

10 9. To provide the Court with an overview of the work done by Hyde & Swigart  
 11 in this case, without requiring the review of our voluminous time records  
 12 themselves, I divide my firm's work into specific phases that track the  
 13 progress of the litigation from our initial investigation through settlement.

14 10. *Initial Case Investigation.* Such investigation included the following:  
 15 Conducting extensive factual and legal research into the merits of the privacy  
 16 claims; discussing the facts with my client; conducting research on the  
 17 Defendant and subsidiaries including whether Defendant had been  
 18 investigated for any prior privacy violations; discussing joint prosecution of  
 19 the action; and drafting, revising, and filing the Complaint, as well as  
 20 drafting and filing the amended Complaint.

21 11. *Motion Practice.* I was forced to devote many hours to Motion practice on  
 22 this matter. Said hours were necessary to prepare Motions for Preliminary  
 23 Approval, Final Approval and the current Fee Petition.

24  
 25  
 26 <sup>4</sup> *Lemiux v. Global Credit & Collection Corp.*, 08-CV-1012-IEG(POR) [Dkt. 46]; *Malta v.*  
 27 *Wells Fargo Home Mortgage*, 10-CV-1290-BEN(NLS) [Dkt. 92]; *Adams v. AllianceOne, Inc.*,  
 28 08-CV-0248-JAH(WVG) [Dkt. 137]; *Gutierrez v. Barclays Group, et al.*, 10-CV-1012-DMS-  
 BGS [Dkt. 57].



- 1 12. *Mediation.* Preparing for mediation consumed numerous hours for reviewing  
2 case law and preparing the mediation brief. In addition, I was required to  
3 travel and from the mediation. Said mediation was followed by many post-  
4 mediation conference calls with counsel and the mediator to finalize the  
5 terms of the current settlement.
- 6 13. *Confirmatory Discovery.* I spent numerous hours drafting and preparing for  
7 the deposition of Defendant's F.R.C.P. 30(b)(6) witness for the purposes of  
8 confirmatory discovery as well as many hours traveling to and from said  
9 deposition.
- 10 14. *Preliminary Approval and Overseeing Settlement Administration.* As stated  
11 above I spent a considerable amount of time drafting and conferring with  
12 opposing counsel on the preliminary approval motion and supporting  
13 documentation. Once this matter was granted preliminary approval, I spent  
14 numerous hours overseeing the notice and administrative process.
- 15 15. *Motion for Attorneys Fees and Costs.* I spent a substantial number of hours  
16 researching, drafting and filing the current Motion.
- 17 16. *Anticipated Additional Hours Expended.* I anticipate a significant amount of  
18 work and hours will be expended after the filing of the fee application in this  
19 matter. Based on previous settlements, it can be reasonably estimated that an  
20 additional 25 hours will be expended on overseeing the administration of the  
21 settlement, preparing the final approval papers and attending the final  
22 approval hearing.

23 **Careful Review of Class Counsel's Lodestar and Deletion of Duplicative Work**

- 24 29. I personally reviewed the time reported in this action for all attorneys for all  
25 attorneys, law clerks, paralegals, and other personnel. I have not included  
26 and am not making a request of the time spent by other attorneys or support  
27 staff at Hyde & Swigart in this action. This time billed to the file was  
28 removed based on reasonable billing discretion and to ensure that Hyde &

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1 Swigart is not seeking reimbursement for unnecessary duplication of efforts.  
2 I can therefore confidently assert that the lodestar and hours reported in this  
3 declaration are reasonable, particularly in light of our efforts and  
4 accomplishments in this litigation.

5 **Multiplier Sought**

6 30. Hyde & Swigart's lodestar totals \$88,893.00 for this Action and the  
7 Heinrichs Action.

8 31. We are seeking a multiplier of 3.6,<sup>5</sup> based upon the total fees incurred by all  
9 Class Counsel lodestars of \$907,507.00 plus costs of \$33,051.88 for a total  
10 request of \$940,559.26.

11 32. This case is such a case that would not have been pursued by any counsel in  
12 the local geographical area unless a multiplier would be awarded. This is  
13 based on the contingency nature of this matter, the litigation risks involved,  
14 and the lost opportunity costs associated with undertaking this action, which  
15 could have been allocated to other cases. Such a multiplier is expected  
16 because of the type of class of cases in which this action falls into.  
17 Furthermore, there is absolutely no incentive for a client to hire an attorney  
18 on an hourly basis to pursue the statutory damages for a TCPA violation if  
19 the maximum recovery would be \$1,500. That would be non-economical for  
20 any client as the attorneys' fees would far exceed any potential recovery.

21 33. Furthermore, cases in which I charge an hourly rate take into account that I  
22 will likely be paid for my work. If I am not being paid, I can withdraw from  
23 the case if necessary and not have to be committed to doing work for perhaps  
24 years on a case without knowing if I will be paid or not. Here, and in this  
25 class of privacy cases, I and other counsel take these cases on only because  
26 the attorneys in the local area expect to be paid a multiplier if the case is

27 <sup>5</sup> The precise multiplier sought by Class Counsel is 3.683740193; however, Class Counsel refers to  
28 the approximate multiplier of 3.6 for the sake of clarity.

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1 successful. Here the case was successful and substantial recovery was  
2 obtained for class members, which would not have otherwise received  
3 anything.

4 34. Based on the type of case, the fact there is not a fee shifting provision and the  
5 result obtained a multiplier of approximately 3.6 is warranted in this case. I  
6 took this case on contingency, with no guarantee of ever being paid and faced  
7 substantial risk should the case proceed to trial. From the onset of this  
8 litigation my firm and co-counsel have expended our own resources with the  
9 risk that we would recover nothing.

10 **Incentive Awards Being Sought**

11 32. As set forth in the Motion for Preliminary Approval, the named class  
12 representative is applying for an incentive awards. The class representative  
13 has been active in this litigation and provided critical information to their  
14 counsel, which made the successful litigation of this matter possible.  
15 Franklin assisted with the factual investigation in to his claims. Franklin also  
16 made herself available by telephone on the date of the mediation, reviewed  
17 and approved the settlement.

18 33. As an incentive award, Franklin seeks \$1,500 for her service as a class  
19 representative.

20 34. Based on the amount of work and involvement by Franklin, the incentive  
21 award in this case is justified.

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35. Class Counsel’s retainer agreement with Franklin provides that counsel may be entitled to attorneys’ fees and “that such an award of attorneys’ fees may be as much as 33 1/3% of any settlement fund or judgment...”

I declare under penalty of perjury of the laws of California and the United States that the foregoing is true and correct, and that this declaration was executed in San Diego, CA on May 20, 2015.

By: /s/ Joshua B. Swigart  
Joshua B. Swigart, Esq.