

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FREDERICK LUSTER, on behalf
of himself and all others similarly
situated,

Plaintiff,

v.

WELLS FARGO DEALER
SERVICES, INC.,

Defendant,

Case No.: 1:15-cv-01058-TWT

**DECLARATION OF JOSHUA B. SWIGART
IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND COSTS**

DECLARATION OF JOSHUA B. SWIGART

I, JOSHUA B. SWIGART, declare:

1. I am one of the attorneys for the plaintiff Frederick Luster (“Plaintiff”) in this action filed against defendant Wells Fargo Dealer Services, Inc. (“Defendant” or “Wells Fargo”). I am over the age of 18 and am fully competent to make this declaration. I have litigated cases in both state and federal courts in California, Washington, Nevada, Arizona, Arkansas, New York, New Jersey, Colorado, Tennessee, Ohio, Florida, Illinois and Texas. I am admitted in every federal district in California and have handled federal litigation in the federal districts of California. I am also admitted to the state bar of Washington, Michigan, and the District of Columbia, the Ninth Circuit Court of Appeals, and the Supreme Court of the United States.
2. If called as a witness, I would competently testify to the matters herein from personal knowledge. The declaration is based upon my personal knowledge, except where expressly noted otherwise.
3. In this action under the Telephone Consumer Protection Act (“TCPA”), I submit this declaration in support of the Class Counsel’s Motion for and Award of Attorneys’ Fees and Costs.
4. I have been preliminarily approved as Class Counsel for the proposed settlement class.

CLASS COUNSEL’S EXPERIENCE

5. 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, California’s invasion

of privacy statutes, under Penal Code § 630 et seq., and false advertising actions concerning consumer products.

6. My firm, Hyde & Swigart, APC, in which I am a principal, has litigated over 1,400 cases in the past fourteen years. My firm has six offices in San Diego, California, Phoenix, Arizona, Las Vegas, Nevada, Denver, Colorado, Minneapolis, Minnesota and Dallas, Texas. Hyde & Swigart, APC has extensive experience in consumer class actions and other complex litigation. My firm has a history of aggressive, successful prosecution of consumer class actions, specifically under California's invasion of privacy statutes and Telephone Consumer Protection Act. Approximately 95% percent of my practice concerns consumer litigation in general, and approximately 50% percent of my class action practice involves litigating claims under the TCPA.

**EXPERIENCE RELEVANT TO THE
TELEPHONE CONSUMER PROTECTION ACT**

7. I have filed and litigated numerous other class actions based on the Telephone Consumer Protection Act in the past four years. The following is a non-exhaustive list of other TCPA class actions which I am or have been personally involved in:
 - a. *Lemieux v. EZ Lube, LLC, et al.*, 12-CV-01791-JLS-WYG (S.D. Cal.) (Served as co-lead counsel; finally approved on December 8, 2014);
 - b. *Malta, et al. v. Wells Fargo Home Mortgage, et al.*, 10-CV-1290-IEG (BLM) (Served as co-lead counsel for a settlement class of borrowers in connection with residential or automotive loans and violations of the TCPA in attempts to collect on those accounts; obtained a common

- settlement fund in the amount of \$17,100,000; final approval granted in 2013);
- c. *Conner v. JPMorgan Chase Bank, et al.*, 10-CV-1284 DMS (BGS) (S.D. Cal.) (finally approved \$11,973,558);
 - d. *In Re: Midland Credit Management, Inc., Telephone Consumer Protection Act Litigation*, 11-md-2286-MMA (MDD) (S.D. Cal.) (Counsel for a Plaintiff in the lead action, prior to the action being recategorized through the multi-district litigation process; preliminarily approved for \$18,000,000);
 - e. *In Re: Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, 11-md-02295-JAH (BGS) (Counsel for a Plaintiff in the lead action, prior to the action being recategorized through the multi-district litigation process; preliminarily approved);
 - f. *Arthur v. SLM Corporation*, 10-CV-00198 JLR (W.D. Wash.) (Nationwide settlement achieving the then-largest monetary settlement in the history of the TCPA concerning calls to cellular telephone at the time: \$24.15 million; final approval granted in 2012);
 - g. *Lo v. Oxnard European Motors, LLC, et al.*, 11-CV-1009-JLS-MDD (S.D. Cal.) (Achieving one of the highest class member payouts in a TCPA action of \$1,331.25 per claimant; final approval granted in 2012);
 - h. *Sarabri v. Weltman, Weinberg & Reis Co., L.P.A.*, 10-01777-AJB-NLS (S.D. Cal.) (Approved as co-lead counsel and worked to obtain a national TCPA class settlement where claiming class members each received payment in the amount of \$70.00 per claimant; final approval granted in 2013);

- i. *Barani v. Wells Fargo Bank, N.A.*, 12-CV-02999-GPC (KSC) (S.D. Cal.) (Co-lead class counsel in a settlement under the TCPA for the sending of unauthorized text messages to non-account holders in connection to wire transfers; finally approved on March 6, 2015 for over \$1,000,000);
- j. *Mills v. HSBC Bank Nevada, N.A.*, Case No. 12-CV-04010-SI (N.D. Cal.) (Finally approved for \$39,975,000);
- k. *Martin v. Wells Fargo Bank, N.A.*, 12-CV-06030-SI (N.D. Cal.);
- l. *Heinrichs v. Wells Fargo Bank, N.A.*, 13-CV-05434-WHA (N.D. Cal.);
- m. *Newman v. ER Solutions, Inc.*, 11-CV-0592H (BGS);
- n. *In Re Jiffy Lube International, Inc.*, MDL No. 2261 (Finally approved for \$47,000,000.00);
- o. *Jaber v. NASCAR*, 11-CV-1783 DMS (WVG) (S.D. Cal.);
- p. *Ridley v. Union Bank, N.A.*, 11-CV-1773 DMS (NLS) (S.D. Cal.);
- q. *Ryabyshchuk v. Citibank (South Dakota) N.A., et al*, 11-CV-1236-IEG (WVG);
- r. *Sherman v. Kaiser Foundation Health Plan, Inc.*, 13-CV-0981-JAH (JMA) (S.D. Cal.) (Settled for \$5,350,000 and finally approved on May 12, 2015; served as co-lead counsel);
- s. *Rivera v. Nuvel Credit Company LLC*, 13-CV-00164-TJH-OP (E.D. Cal.);
- t. *Karayan v. Gamestop Corp.*, 3:12-CV-01555-P (N.D. Texas);
- u. *Foote v. Credit One Bank, N.A. et al.*, 13-cv-00512-MWF-PLA (C.D. Cal.);
- v. *Webb v. Healthcare Revenue Recovery Group*, 13-cv-00737-RS (N.D. Cal.);

- w. *Couser v. Comenity Bank*, 12-cv-02484-MMA-BGS (S.D. Cal. Oc. 2, 2014) (Finally approved for \$8,475,000 on May 27, 2015 as served as co-lead counsel);
 - x. *Couser v. Apria Healthcare, Inc. et al.*, 13-cv-00035-JVS-RNB (C.D. Cal. Oct. 27, 2014) (Finally approved on March 9, 2015 and served as co-lead counsel);
 - y. *Rose v. Bank of America Corporation et al.*, 12-cv-04009-EJD (N.D. Cal.) (Finally approved for \$32,000,000 in 2014);
 - z. *Newman v. AmeriCredit Financial Services*, 11-cv-03041-DMS-BLM (S.D. Cal.) (finally approving TCPA settlement for over \$6,500,000 on March 28, 2016);
 - aa. *Fox v. Asset Acceptance, LLC*, 14-cv-00734-GW-FFM (C.D. Cal. July 1, 2016) (finally approved TCPA class action for \$1,000,000; \$200,000 cash and \$800,000 debt relief);
 - bb. *Abdeljalil v. GE Capital Retail Bank*, 12-cv-02078-JAH-MDD (S.D. Cal.) (Class Certification granted and preliminarily approved for \$7,000,000);
 - cc. *Barrett v. Wesley Financial Group, LLC*, 13-cv-00554-LAB-KSC (S.D. Cal.) (Class certification granted); and,
 - dd. *Gehrich v. Chase Bank, N.A.*, 12-cv-5510 (N.D. Cal.) (finally approved for \$34,000,000).
8. Many of the cases listed above, which have settled, have resulted in the creation of combined common funds and/or distribution to class member in the tens of millions of dollars. The outstanding results mentioned above are a direct result of the diligence and tenacity shown by both myself and Hyde & Swigart, APC, in successfully prosecuting complex class actions.

9. I argued before the Ninth Circuit Court of Appeals concerning the TCPA case of *Knutson v. Sirius XM Radio*, No. 12-56120 (9th Cir. 2014) as co-lead counsel, which resulted in an order in favor of my client.

**HYDE & SWIGART, APC'S OTHER
CONSUMER RELATED EXPERIENCE AND RESULTS**

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

- a. *Knell, et al. v. FIA Card Services, N.A.*, 13-CV-01653-AJB-WVG (S.D. Cal.) (California class action settlement under Penal Code 632 et seq., for claims of invasion of privacy. Settlement resulted in a common fund in the amount of \$2,750,000; finally approved in August 15, 2014);
- b. *Hoffman v. Bank of America Corporation*, 12-CV-00539-JAH-DHB (S.D. Cal.) (California class action settlement under Penal Code 632 et seq., for claims of invasion of privacy. Settlement resulted in a common fund in the amount of \$2,600,000; finally approved on November 6, 2014 and served as co-lead counsel);
- c. *Sherman v. Yahoo!, Inc.*, 2014 U.S. Dist. LEXIS 13286; 13-CV-0041-GPC-WVG (S.D. Cal.) (TCPA class action where Defendant's motion for summary judgment was denied holding that a single call or text message with the use of an ATDS may be actionable under the TCPA);
- d. *Olney v. Progressive Casualty Insurance Company*, 13-CV-2058-GPC-NLS, 2014 U.S. Dist. LEXIS 9146 (S.D. Cal.) (Defendant's motion to dismiss or in the alternative to strike the class allegations was denied

- finding that debt collection calls were not exempt from coverage under the TCPA);
- e. *Iniguez v. The CBE Group, Inc.*, 2013 U.S. Dist. LEXIS 127066 (E.D. Cal.); 13-CV-00843-JAM-AC (The court denied Defendant's motion to dismiss and to strike class allegations holding that the TCPA applies to any call made to a cellular telephone with an ATDS);
 - f. *Macias v. Water & Power Community Credit Union*, BC515936 (Los Angeles Superior Court) (Class certification granted under the Rosenthal Fair Debt Collection Practices Act; class action settlement preliminarily approved on November 10, 2015); and,
 - g. *Mount v. Wells Fargo Bank, N.A.*, BC395959 (Sup. Ct. Los Angeles) (finally approved for \$5,600,000).

**ADDITIONAL RELEVANT TRAINING,
SPEAKING ENGAGEMENTS AND ASSOCIATIONS**

11.I have undergone extensive training in the area of consumer law and the Telephone Consumer Protection Act. The following is a list of recent training conferences I attended:

- a. National Consumer Law Conference; Oakland, CA – 2003;
- b. National Consumer Law Conference (FDCPA Mini-Conference); Kansas City, MO – 2004;
- c. National Consumer Law Conference; Boston, MA – 2004;
- d. Five-day extensive one-on-one training with The Barry Law Office; San Diego, CA –2005;
- e. Three-day FDCPA Mini-Conference; Minneapolis, MN – 2005;

- f. Four-day extensive one-on-one training with The Barry Law Office; Minneapolis, MN – 2005;
- g. Four-day National Association of Consumer Advocates Conference; Minneapolis, MN – 2005;
- h. Four-day National Consumer Law Center Conference; Nashville, TN – 2008;
- i. Three-day National Consumer Law Center Conference; Portland, OR - 2008;
- j. Speaker at a Three-day National Consumer Law Center Conference; San Diego, CA - 2009;
- k. Speaker ABA/JAG presentation to military service members and counsel; MCRD, San Diego CA – 2010;
- l. Speaker ABA teleconference on defending consumer credit card debt and related issues; San Diego, CA – 2010;
- m. Three-day National Consumer Law Center Conference; Seattle, WA - 2011;
- n. Two-day FDCPA Mini-Conference; New Orleans; LA - 2012;
- o. Two-day National Consumer Law Center Conference on the FDCPA; Seattle, WA - 2012;
- p. National Consumer Law Center Conference, National Convention; Baltimore, MD - 2013;
- q. Speaker ABA National Conference, Business Litigation Section; Trends in Consumer Litigation; San Francisco, CA - 2013;
- r. Speaker National Consumer Law Center; Nuts and Bolts of TCPA Litigation; San Antonio, TX - 2014;

- s. Speaker San Diego County Bar Association; Convergence of the FDCPA and Consumer Bankruptcy; San Diego, CA - 2014;
- t. Guest Speaker at California Western School of Law; Consumer Law class - 2014;
- u. 8th Annual Class Action Seminar; San Francisco, CA – 2014;
- v. Speaker regarding class actions at the NCLC National Conference held in Anaheim, CA in 2016.

12.I am a member in good standing of the following local and national associations:

- a. National Association of Consumer Advocates;
- b. Federal Bar Association, Southern District of California Chapter;
- c. San Diego County Bar Association;
- d. Riverside County Bar Association;
- e. San Bernardino County Bar Association;
- f. Enright Inns of Court (2011-2014);
- g. American Association for Justice.

13.I have been appointed class counsel in several class actions brought under the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (TCPA). My practice involves significant TCPA litigation and I am or have been counsel in significant national TCPA class actions including, but not limited to, class actions against Bank of America, Chase, Wells Fargo and Comenity Bank, to mention a few.

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I declare under penalty of perjury under the laws of Georgia and the United States of America that the foregoing is true and correct, and that this declaration was executed on July 18, 2017 at San Diego, California.

By: s/ Joshua B. Swigart
Joshua B. Swigart, Esq.
Attorneys for Plaintiff