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10 *Attorneys for Plaintiff Younus Bayat, Mohammed*
11 *Ereikat and the Settlement Class*

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14
15 YOUNUS BAYAT and MOHAMMED
EREIKAT, on behalf of themselves and all
16 others similarly situated,
17 Plaintiffs,
18 v.
19 BANK OF THE WEST,
20 Defendant.

Case No. 13-CV-2376-EMC

**DECLARATION OF DANIEL M.
HUTCHINSON IN SUPPORT OF MOTION
FOR AN AWARD OF ATTORNEYS' FEES
AND EXPENSES AND FOR SERVICE
AWARDS TO THE CLASS
REPRESENTATIVES**

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1 1. I am a partner in the law firm of Lief, Cabraser, Heimann & Bernstein, LLP
2 (“LCHB”), counsel of record for Plaintiffs in this matter. I have been one of the lawyers
3 primarily responsible for the prosecution of Plaintiffs’ claims on behalf of the Class. I am
4 admitted to practice before this Court and am a member in good standing of the bar of the State of
5 California; the United States District Court for the Central, Northern, and Southern Districts of
6 California; the United States District Court for the Eastern District of Wisconsin; and the U.S.
7 Courts of Appeals for the First, Third, Fourth, and Ninth Circuits. I respectfully submit this
8 declaration in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and
9 for Service Awards to the Class Representatives. I make these statements based on personal
10 knowledge and would so testify if called as a witness at trial.

11 **Background and Experience**

12 2. LCHB is a national law firm with offices in San Francisco, New York, and
13 Nashville. LCHB’s practice focuses on complex and class action litigation involving
14 employment, consumer, financial fraud, securities, product liability, environmental, and personal
15 injury matters. Attached hereto as **Exhibit A** is a true and correct copy of LCHB’s current firm
16 resume, showing some of the firm’s experience in complex and class action litigation. This
17 resume is not a complete listing of all cases in which LCHB has been class counsel or otherwise
18 counsel of record.

19 3. I graduated from Brown University in 1999. I served as a judicial extern to the
20 Honorable Martin J. Jenkins, U.S. District Court, Northern District of California, in 2004. I
21 graduated from the University of California at Berkeley, Boalt Hall School of Law in 2005.

22 4. Since 2005, I have practiced with LCHB, where I became a partner in January
23 2011. At LCHB, I have focused on focused on representing plaintiffs in employment litigation
24 (including discrimination and ERISA disputes), and financial and consumer fraud cases.

25 **Consumer Protection Class Actions**

26 5. As an LCHB partner, my practice has focused on a number of nationwide
27 consumer protection class actions.
28

1 a. I, along with other attorneys from my firm, served as chair of the Plaintiffs
2 Executive Committee in *In re: Bank of Am. Credit Protection Mktg. & Sales Practices Litig.*,
3 3:11-md-02269-TEH (N.D. Cal.), multi-district litigation (“MDL”) against Bank of America and
4 FIA Card Services, challenging the imposition of charges for so-called “payment protection” or
5 “credit protection” programs. In January 2013, the Court approved a \$20 million settlement
6 including required practice changes.

7 b. I, along with other attorneys from my firm, served as co-lead counsel in a
8 series of groundbreaking nationwide class actions under the Telephone Consumer Protection Act.
9 In September 2012, the court approved a \$24.15 million class settlement against Sallie Mae, the
10 then-largest monetary settlement in the history of the TCPA. *See Arthur v. Sallie Mae, Inc.*, No.
11 C10-0198 JLR, 2012 U.S. Dist. LEXIS 132413 (W.D. Wash. Sept. 17, 2012).

12 c. I, along with other attorneys from my firm and co-counsel, served as
13 counsel in *In re Capital One Telephone Consumer Protection Act Litigation*, Master Docket No.
14 1:12-cv-10064 (N.D. Ill.). On July 25, 2014, the court preliminarily approved a \$75,455,098.74
15 class settlement that awaits final approval.

16 d. I, along with other attorneys from my firm and co-counsel, served as
17 counsel in *Wilkins v. HSBC Bank Nev., N.A.*, Case No. 14-cv-190 (N.D. Ill.). On July 25, 2014,
18 the court preliminarily approved a \$39,975,000 class settlement that awaits final approval.

19 e. I, along with other attorneys from my firm and co-counsel, served as
20 counsel in *Rose v. Bank of Am. Corp.*, 5:11-cv-02390-EJD (N.D. Cal.), and *Duke v. Bank of Am.*,
21 *N.A.*, 5:12-cv-04009-EJD (N.D. Cal.). On August 29, 2014, the Court approved a \$32,083,905
22 class settlement.

23 f. I, along with other attorneys from my firm and co-counsel, served as
24 counsel in the nationwide TCPA class actions *Bradley v. Discover Financial Services*, Case No.
25 4:11-cv-5746-YGR (N.D. Cal.), and *Steinfeld v. Discover Financial Services*, Case No. 3:12-cv-
26 01118-JSW (N.D. Cal.). In March 2014, the court approved an \$8.7 million class settlement.

27 g. I, along with other attorneys from my firm and co-counsel, served as
28 counsel in *Connor v. JPMorgan Chase Bank*, Case No. 10 CV 1284 DMS BGS (S.D. Cal. Mar.

1 12, 2012), a nationwide TCPA class action. On February 5, 2015, the court approved a
2 \$11,665,592.09 cash settlement.

3 h. I, along with other attorneys from my firm and co-counsel, served as
4 counsel in *Wannemacher v. Carrington Mortgage Services LLC*, Case No. 8:12-cv-02016-FMO-
5 AN (C.D. Cal.). On December 22, 2014, the court approved a \$1.035 million settlement.

6 i. In addition to the foregoing, I currently serve as co-lead counsel in the
7 following cases under the TCPA: *Ossola v. American Express Co., et al.*, Case No. 1:13-CV-
8 4836 (N.D. Ill.); *Brown v. Directv LLC, et al.*, Case No. 2:13-cv-01170-DMG-E (C.D. Cal.);
9 *Ineman v. Kohl's Corp.*, Case No. 3:14-cv-00398-WMC (W.D. Wisc.); *Smith v. State Farm*
10 *Mutual Auto. Ins. Co., et al.*, Case No. 1:13-cv-02018 (N.D. Ill.); and *Balschmiter v. TD Auto*
11 *Finance, LLC*, Case No. 2:13-cv-01186 (E.D. Wisc.).

12 j. I am co-lead counsel in *Yarger v. ING Bank, fsb*, Civil Action No. 1:11-cv-
13 00154-LPS (D. Del.), representing consumers who charge that ING Direct breached its promise
14 to allow them to refinance their home mortgages for a fixed flat fee of \$500 or \$750, and instead
15 charged a higher fee of one-monthly mortgage payment for refinancing. In 2012, the court
16 certified a class of consumers in ten states who purchased or retained an ING mortgage during the
17 class period. On October 7, 2014, the court approved a \$20,350,000 class settlement.

18 6. Prior to my elevation to partner, I participated in successful litigation of a wide
19 variety of other complex federal and state consumer class actions during my professional career.
20 Class action cases I have successfully prosecuted to judgment or settlement, in addition to the
21 foregoing, include: *Sutter Health Uninsured Pricing Cases*, Case No. J.C.C.P. 4388 (Sacramento
22 Super. Ct.) (lead class counsel in consumer class action that resulted in over \$275 million
23 settlement and comprehensive pricing and collections policy changes for uninsured patients
24 across all Sutter hospitals); *Catholic Healthcare West Cases*, Case No. J.C.C.P. 4453 (San
25 Francisco County Super. Ct.) (lead class counsel in consumer class action that resulted in over
26 \$423 million settlement and pricing and collections policy changes for uninsured patients across
27 all CHW hospitals); *Scripps Health Cases*, Case No. IC859468 (S.D. Super. Ct.) (lead class
28 counsel in consumer class action that resulted in over \$73 million settlement and pricing and

1 collections policy changes for uninsured patients at Scripps hospitals); *John Muir Uninsured*
2 *Healthcare Cases*, Case No. J.C.C.P. 4494) (Contra Costa County Super. Ct.) (lead class counsel
3 in consumer class action that resulted in over \$113 million settlement and pricing and collections
4 policy changes for uninsured patients at John Muir hospitals); *Cincotta v. California Emergency*
5 *Physicians Medical Group*, No. 07359096 (Cal. Supr. Ct.) (lead class counsel in consumer class
6 action that resulted in over \$27 million settlement and pricing and collections policy changes,
7 including complete debt elimination—100% cancellation of the bill, for nearly 100,000 uninsured
8 patients who alleged they were charged excessive and unfair rates for emergency room service
9 across 55 hospitals throughout California.

10 **Employment Class Actions**

11 7. As an LCHB partner, I have gained extensive experience in the litigation, trial, and
12 settlement of complex employment class actions as Class Counsel in several cases.

13 a. I served as co-lead counsel in *Vedachalam v. Tata Am. Int'l Corp.*, Case
14 No. 3:06-cv-00963-CW (N.D. Cal.), a case on behalf of a certified class of over 13,000 foreign
15 nationals working in the United States who were denied promised wages and benefits. In July
16 2013, the court approved a \$29.75 million nationwide class settlement.

17 b. I served as co-lead counsel in *Ellis v. Costco Wholesale Corp.*, No. 04-
18 03341-EMC (N.D. Cal.), a case on behalf of two certified classes of female employees charging
19 that Costco discriminates against women in promotions to management positions. On May 27,
20 2014, this Court approved a class settlement requiring changes to Costco's promotion process and
21 establishing an \$8 million settlement fund.

22 c. I, along with other attorneys from my firm and co-counsel, served as co-
23 lead counsel in *Holloway v. Best Buy*, No. C05-5056-PJH (N.D. Cal.), representing a class of
24 current employees of Best Buy that alleged Best Buy stores nationwide discriminated against
25 women, African Americans, and Latinos. In November 2011, the Court approved a settlement of
26 the class action in which Best Buy agreed to changes to its personnel policies and procedures that
27 will enhance the equal employment opportunities of the tens of thousands of women, African
28 Americans, and Latinos employed by Best Buy nationwide.

1 d. I, along with other attorneys from my firm and co-counsel, am court-
2 appointed co-lead counsel in *Tatum v. R.J. Reynolds Tobacco Co.*, Case No. 1:02 CV 373 (M.D.
3 N.C.), a class action on behalf of approximately 3,500 participants in the RJR pension plan who
4 brought claims under the Employee Retirement Income Security Act of 1974 (“ERISA”). In
5 February 2010, I, along with co-counsel, completed a five-week trial in this matter. Following a
6 successful appeal to the Fourth Circuit Court of Appeals, *Tatum v. RJR Pension Inv. Comm.*, 761
7 F.3d 346, 351 (4th Cir. 2014), final post-trial briefing is under submission with the district court.

8 e. I, along with other attorneys from my firm and co-counsel, am co-lead
9 counsel in *Benedict v. Hewlett-Packard Company*, 5:13-cv-00119-BLF (N.D. Cal.), a
10 conditionally certified FLSA collective action on behalf of over 10,000 technical support
11 workers.

12 8. In addition to the foregoing, prior to my elevation to partner I participated in
13 successful litigation of a wide variety of other complex federal and state employment class
14 actions during my professional career.

15 a. I, along with other attorneys from my firm and co-counsel, served as co-
16 lead counsel in *Cruz v. U.S., Estados Unidos Mexicanos, Wells Fargo Bank, et al.*, No. 01-0892-
17 CRB (N.D. Cal.), representing Mexican workers and laborers, known as Braceros (“strong
18 arms”), who came from Mexico to the United States pursuant to bilateral agreements from 1942
19 through 1946 to aid American farms and industries hurt by employee shortages during World
20 War II in the agricultural, railroad, and other industries. A settlement required the Mexican
21 government to provide a payment of approximately \$3,500 to Braceros, or their surviving spouses
22 or children. In approving the settlement in February 2009, U.S. District Court Judge Charles
23 Breyer stated:

24 I’ve never seen such litigation in eleven years on the bench that was more difficult
25 than this one... Notwithstanding all of these issues that kept surfacing ... over the
26 years, the plaintiffs persisted... And, in fact, they achieved a settlement of the case,
27 which I find remarkable under all of these circumstances.

1 b. I, along with other attorneys from my firm and co-counsel, served as co-
2 lead counsel in *Barnett v. Wal-mart Stores, Inc.*, Case No. 01 2 24553 8 SEA (Sup. Ct. Wash.), a
3 certified statewide wage and hour class action filed on behalf of hourly employees challenging
4 the company's failure to compensate its hourly employees for missed rest and meal breaks and
5 off-the-clock work in stores throughout Washington state. This case settled for \$35 million, as
6 well as injunctive relief governing company policies.

7 c. I, along with other attorneys from my firm and co-counsel, served as one of
8 plaintiffs' lead counsel in *Amochaev v. Citigroup d/b/a Smith Barney*, Civ. No. 05-1298-PJH
9 (N.D. Cal.), a gender discrimination class action on behalf of female Financial Advisors
10 employed by Smith Barney that resulted in a settlement involving comprehensive injunctive relief
11 and over \$33 million in monetary relief.

12 **Antitrust and Securities Actions**

13 9. I have also served as Class Counsel in several antitrust and other financial fraud
14 actions.

15 a. I served, with my co-counsel, as Lead Counsel in *Haley Paint Co. v. E.I.*
16 *Dupont De Nemours and Co. et al.*, No. 10-cv-00318-RDB (N.D. Md.), a certified nationwide
17 class action lawsuit on behalf of direct purchasers of titanium dioxide charging that defendants
18 conspired to fix, raise, and maintain the price of titanium dioxide in the United States. In
19 November 2013, the court approved class settlements with four defendants totaling \$163.5
20 million.

21 10. As an LCHB associate, I played a significant role in several antitrust and securities
22 actions, including:

23 a. I, along with other attorneys from my firm and co-counsel, served as
24 Plaintiffs' counsel in *Quantegy Recording Solutions, LLC, et al. v. Toda Kogyo Corp., et al.*,
25 No. C-02-1611 (PJH), antitrust litigation against manufacturers, producers, and distributors of
26 magnetic iron oxide ("MIO"). In August 2006 and January 2009, the Court approved settlements
27 totaling \$6.35 million.

28

1 b. I have also successfully litigated complex individual actions, including
2 *Alaska State Department of Revenue v. America Online*, No. 1JU-04-503 (Alaska Supr. Ct.) (co-
3 counsel in securities fraud action brought by the Alaska State Department of Revenue, Alaska
4 State Pension Investment Board and Alaska Permanent Fund Corporation that settled for
5 \$50 million December 2006).

6 **Other Experience and Awards**

7 11. I have received several awards and honors for my litigation efforts.

8 12. In 2014, Law360 recognized me as one of six of the nation's top employment
9 lawyers under 40. *See Daniel Siegal, Rising Star: Lieff Cabraser's Daniel Hutchinson* (Apr. 22,
10 2014), available at <http://www.law360.com/employment/articles/530612>; *Law360 Names Top*
11 *Attorneys Under 40* (Apr. 11, 2014), available at [http://www.law360.com/employment/articles/](http://www.law360.com/employment/articles/525943)
12 [525943](http://www.law360.com/employment/articles/525943).

13 13. In 2012, The Recorder named me as one of "50 Lawyers on the Fast Track."

14 14. I was recognized as a Northern California Super Lawyer in 2013 and 2014, and,
15 from 2009 to 2012, was named as a Northern California Super Lawyer Rising Star.

16 15. In addition to being an active litigator, I have long been involved in many
17 educational and legal groups, including the Lawyers' Committee for Civil Rights of the San
18 Francisco Bay Area (Co-Chair of the Board of Directors, 2014-present; Secretary, 2011-2013;
19 Director; 2009-present); American Bar Association (Section of Labor & Employment Law
20 Leadership Development Program); Association of Business Trial Lawyers (Leadership
21 Development Committee, 2008-2010); Bar Association of San Francisco; Consumer Attorneys of
22 California; and National Bar Association.

23 16. I am a frequent speaker on class action and employment law topics, including at
24 events sponsored by the American Bar Association's Section of Labor and Employment Law, the
25 Consumer Attorneys of California, the Mason Judicial Education Program, the Impact Fund, the
26 National Employment Lawyers Association, and the UCLA School of Law. I recently provided a
27 CLE presentation on arbitration and class actions to approximately 75 California state court
28

1 judges through the Judicial Education Program provided by the Law & Economics Center at
2 George Mason University School of Law.

3 17. I have published and presented papers on race and gender class actions under Title
4 VII, including “Ten Points from *Dukes v. Wal-Mart Stores, Inc.*,” 20(3) CADS Report 1 (Spring
5 2010); “Pleading an Employment Discrimination Class Action” and “EEO Litigation: From
6 Complaint to the Courthouse Steps,” ABA Section of Labor and Employment Law Second
7 Annual CLE Conference (2008); and “Rule 23 Basics in Employment Cases,” Strategic
8 Conference on Employment Discrimination Class Actions (2008).

9 **I. Overview of LCHB’s Efforts in this Action**

10 **Pre-Filing Investigation and Informal Discovery**

11 18. Plaintiffs’ Counsel thoroughly researched Bank of the West’s (“BOW”) practices
12 and Plaintiffs’ legal claims prior to filing suit by, among other things, interviewing several Class
13 Members, reviewing Class Members’ pertinent document and information, including account
14 applications and agreements, and researching relevant TCPA case law and regulations. This
15 information was critical to Counsel’s understanding of the nature of the problem, the scope of
16 potential damages and remedies, and the potential risks and benefits of continued litigation. Class
17 Counsel’s interviews with Plaintiffs and Class Members revealed that for many, putting a stop to
18 the autodialed and/or prerecorded calls to their cell phones was the primary goal of this litigation.

19 **Pre-Filing Negotiation**

20 19. In October 2012, Plaintiffs’ counsel informed Bank of the West of Plaintiff
21 Bayat’s intention to file a class action lawsuit on behalf of himself and all other similarly situated
22 consumers for legal and equitable relief.

23 20. In November 2012, the parties entered into a Litigation Standstill and Tolling
24 Agreement providing that time remaining with respect to the statute of limitations, if any, should
25 be tolled as of November 2, 2012, for the claims of Plaintiff and all other similarly-situated
26 consumers arising out of the alleged automated calls to consumers’ cellular phones by Bank of
27 the West without prior express consent.
28

1 21. Over the course of the next seven months, the parties participated in dozens of
2 telephonic and written exchanges. During these sessions, the parties discussed their relative
3 views of the law and the facts, and potential relief for the proposed Class. The parties' exchanged
4 significant informal discovery, including Plaintiffs' cellular telephone records, data regarding
5 Bank of the West's calls, relevant caselaw, declaratory rulings by the FCC, and settlement
6 agreements in a series of TCPA actions.

7 22. On May 16, 2013, the parties held an in-person meeting in the offices of Plaintiffs'
8 counsel. The parties' reached an impasse and Plaintiff Bayat prepared to file a class action
9 complaint.

10 **The Litigation**

11 23. On May 24, 2013, Plaintiff Bayat filed his class action complaint.

12 24. On June 28, 2013, Plaintiff Ereikat joined this action in a First Amended
13 Complaint Dkt. No. 9.

14 25. On August 30, 2013, Bank of the West answered the First Amended Complaint
15 and set forth thirteen affirmative defenses. Dkt. No. 18.

16 26. The parties remained sharply divided on the merits of this action. As reported to
17 the Court in the Joint Case Management Conference Statement, Bank of the West anticipated
18 filing an early motion on the issue of "prior express consent" under the TCPA. Dkt. No. 15 at 4-
19 5.

20 27. At the September 5, 2013, Case Management Conference, the Court ordered the
21 parties to mediate within 120 days. Dkt. Nos. 20, 21.

22 28. The parties thereafter exchanged their initial disclosures and set a mediation date
23 for December 18, 2013. Over the course of the next three months, the parties engaged in all
24 "discovery necessary to facilitate mediation," as directed by the Court. Dkt. Nos. 21, 23.

25 **The Mediation**

26 29. On December 18, 2013, the parties participated in a full-day mediation session
27 before the Honorable Edward A. Infante (Ret.) of JAMS. The parties submitted detailed
28 mediation briefs to Judge Infante, setting forth their respective views on the strengths of their

1 cases. During the day-long session, the parties discussed their relative views of the law and the
2 facts and potential relief for the proposed Class. Counsel exchanged a series of counterproposals
3 on key aspects of the Settlement, including the parameters of the practice changes and monetary
4 relief for the Class. At all times, the parties' settlement negotiations were highly adversarial, non-
5 collusive, and at arm's length.

6 30. The mediation resulted in the issuance of a mediator's proposal. However, in
7 order for the parties to respond to the proposal, the parties agreed that they must engage in
8 additional discovery not contemplated by any party prior to the mediation.

9 31. Following additional discovery and a series telephonic and written
10 communications with Judge Infante, the parties agreed to a modified mediator's proposal on
11 March 4, 2014.

12 **Confirmatory Discovery**

13 32. Pursuant to the mediator's proposal, the parties engaged in confirmatory
14 discovery. Plaintiffs served, and Bank of the West provided sworn responses to, Plaintiffs'
15 written discovery, including data regarding the number of consumers to whom it made automated
16 calls. Plaintiffs also took a Rule 30(b)(6) deposition of Bank of the West's witness.

17 33. Bank of the West therefore provided Plaintiffs' Counsel with confidential and
18 proprietary confirmatory discovery necessary to confirm that the terms of the Settlement are fair,
19 reasonable, and adequate.

20 34. With the confirmatory discovery completed, the parties turned to the settlement
21 agreement, claim forms, and notice documents and executed a Settlement Agreement
22 ("Agreement") on June 4, 2014.

23 **Contingent Nature of Action**

24 35. This matter has required LCHB to spend time on this litigation that could have
25 been spent on other matters. At various times during the litigation of this class action, this lawsuit
26 has consumed my time, along with the time of partners Jonathan D. Selbin and Nicole D.
27 Reynolds; associates Douglas Cuthbertson and RoseMarie Maliekel; and paralegal Jennifer
28 Rudnick.

1 36. Such time could otherwise have been spent on other fee-generating work. Because
2 LCHB undertook representation of this matter on a contingency-fee basis, LCHB shouldered the
3 risk of expending substantial costs and time in litigating the action without any monetary gain in
4 the event of an adverse judgment.

5 37. This action was especially risky, given BOW's potential defense of prior express
6 consent. Had the Court ruled in BOW's favor, judgment may have been entered in favor of BOW
7 or a class may never have been certified, and Class Members would not have recovered either the
8 valuable prospective practice changes or the significant monetary relief that this Settlement
9 provides.

10 38. If not devoted to litigating this action, from which any remuneration to LCHB is
11 wholly contingent on a successful outcome, the time that LCHB's attorneys and staff spent
12 working on this case could and would have been spent pursuing other potentially fee generating
13 matters.

14 **A. LCHB's Lodestar**

15 39. LCHB has maintained contemporaneous time records since the commencement of
16 this action. Through February 9, 2015, LCHB has worked a total of 393.3 hours in this action,
17 with a total lodestar of \$202,245.50, and an overall blended rate (lodestar divided by total hours)
18 of \$514.23 per hour.

19 40. All attorneys and staff at LCHB are instructed to maintain contemporaneous time
20 records reflecting the time spent on this and other matters. The regular practice at LCHB is for all
21 attorneys and staff to keep contemporaneous time records, maintained on a daily basis, and
22 describing tasks performed in 0.1 hour increments. Firm policy requires all staff to enter their
23 time into an electronic timekeeping system on a daily basis. I review and audit the time on a
24 regular basis.

25 41. LCHB's lodestar will grow slightly as we continue to finalize the settlement
26 process and close the litigation. The claims period will last for several months, and LCHB's
27 commitment of time and labor to this case will continue until (and likely beyond) that date.
28 LCHB will continue to assist Class members with individual inquiries, will oversee the claims

1 resolution process, and Class Counsel will help resolve Class member challenges to the result of
 2 their claims submissions. Judging by previous experiences, these responsibilities will require
 3 hundreds of hours of work by Class Counsel over the coming months.

4 **B. LCHB's Costs**

5 42. LCHB maintains all books and records regarding costs expended on each case in
 6 the ordinary course of business, which books and records are prepared from expense vouchers
 7 and check records. I have reviewed the records of costs expended in this matter.

8 43. LCHB has incurred \$21,424.03 in expenses, which includes LCHB's proportional
 9 contributions to the fees associated with the full-day mediation; travel costs associated with,
 10 among other things, participation in the in-person meeting and mediation; other hard costs such as
 11 research on LEXIS; Federal Express or messenger charges; and internal costs such as printing,
 12 copying, and telephone charges.

13 **C. LCHB Billing Rates**

14 44. The following table lists the LCHB attorneys and professional personnel and their
 15 current hourly rates.

Name and Position	Rate
Jonathan D. Selbin Partner at LCHB Harvard Law School, 1993	\$775
Daniel M. Hutchinson Partner at LCHB Boalt Hall School of Law University of California, Berkeley, 2005	\$550
Nicole D. Reynolds Partner at LCHB University of California, Hastings College of the Law, 2006	\$435
Douglas I. Cuthbertson Associate at LCHB Fordham University School of Law School, 2007	\$465
RoseMarie Maliekel Associate at LCHB Northwestern University School of Law, 2010	\$375
Jennifer Rudnick Paralegal at LCHB B.A., Syracuse University, 2003	\$305

1 45. LCHB sets its rates for attorneys and staff members based on a variety of factors,
2 including, among others: the experience, skill and sophistication required for the types of legal
3 services typically performed; the rates customarily charged in similar matters; and the experience,
4 reputation and ability of the attorneys and staff members.

5 46. These rates are my firm's current commercial billing rates and are supported by
6 our extensive and specialized experience in these types of cases and recognized expertise.
7 LCHB's rates reflect the market rates in the markets within which LCHB's primary offices are
8 located and from which this matter has been handled: San Francisco and New York. LCHB's
9 hourly rates were negotiated with and are paid on an hourly basis by a sophisticated commercial
10 entity, BlackRock (f/k/a Merrill Lynch Mutual Funds). LCHB does not bill at different rates for
11 different clients or different types of cases.

12 47. A sample of N.D Cal. courts that have approved LCHB's standard billing rates and
13 reimbursement of costs as reasonable are:

14 a. *Ross v. Trex Co., Inc.*, No. 09-cv-00670-JSW (N.D. Cal. Dec. 16, 2013)
15 (White, J.) (awarding requested attorneys' fees);

16 b. *Walsh v. Kindred Healthcare*, No. C 11-00050 JSW, 2013 U.S. Dist.
17 LEXIS 176319, at *9 (N.D. Cal. Dec. 16, 2013) (White, J.) ("The Court concludes Plaintiffs have
18 shown that the requested rates are reasonable");

19 c. *Vedachalam v. Tata Consultancy Services, Ltd.*, No. C-06-0963-CW (N.D.
20 Cal. July 18, 2013) (Wilken, J.) ("Class Counsel's hourly rates are reasonable in light of their
21 experience (as reflected in their declarations and the declarations of their peers in the field of
22 class action litigation), and the rates charged are comparable to other attorneys in this field.");

23 d. *Wehlage, et al. v. Evergreen at Arvin, LLP, et al.*, No. 4:10-cv-058390-CW
24 (N.D. Cal. Oct. 4, 2012) (Wilken, J.) ("[T]he billing rates used by Class Counsel to calculate their
25 lodestar are reasonable and in line with prevailing rates in this District for personnel of
26 comparable experience.");

27 e. *In re AXA Rosenberg Investor Litigation*, No. 11-00536-JSW (N.D. Cal.
28 April 2, 2012) (White, J.) ("The Court has also reviewed Lead Counsel's hourly rates and

1 concludes that these rates are appropriate for attorneys in this locality of Lead Counsel's skills
2 and experience.”);

3 f. *Holloway v. Best Buy Co., Inc.*, No. C-05-5056 PJH (MEJ) (N.D. Cal.
4 Nov. 9, 2011) (Hamilton, J.) (“The rates used by Class Counsel are reasonable.”);

5 g. *Fulford v. Logitech, Inc.*, No. 08-cv-02041 MMC, 2010 U.S. Dist. LEXIS
6 144437, at *10 (N.D. Cal. Mar. 5, 2010) (Chesney, J.) (“The Court further finds that Plaintiff’s
7 Counsels’ hourly rates are reasonable for their skill and the work they performed.”);

8 h. *Higazi v. Cadence Design Systems, Inc.*, No. 07-2813-JW (N.D. Cal.
9 July 7, 2008);

10 i. *Adams v. Inter-Con Sec. Sys., Inc.*, No. C-06-5428 MHP (N.D. Cal.
11 Feb. 28, 2008) (Docket No. 177) (Order Granting Application for Attorneys’ Fees and Costs, at 5)
12 (Patel, J.) (“The Court has reviewed the hourly rates used by Class Counsel in calculating their
13 lodestar fees and concludes that these rates are appropriate for attorneys in this locality of Class
14 Counsel’s skill and experience.”);

15 j. *Fleming v. Kemper Nat. Services, Inc.*, 373 F. Supp. 2d 1000, 1012 (N.D.
16 Cal. 2005); and

17 k. *Chaid v. Glickman*, No. C98-1004-WHO (JCS), 1999 WL 33292940, at *6
18 (N.D. Cal. Nov. 17, 1999).

19 48. Federal and state courts throughout the country have likewise approved LCHB’s
20 standard billing rates and reimbursement of costs as reasonable. *See, e.g., Lonardo v. Travelers*
21 *Indem. Co.*, -- F. Supp. 2d --, 2010 WL 1416698, at *22-23 (N.D. Ohio Mar. 31, 2010); *Electrical*
22 *Carbon Products Cases*, J.C.C.P. No. 4294 (San Francisco County Super. Ct. Feb. 4, 2009);
23 *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1326-27 (W.D. Wash. 2009); *In re John Muir*
24 *Uninsured Healthcare Cases*, J.C.C.P. No. 4494 (Contra Costa County Super. Ct. Nov. 19, 2008);
25 *Weekend Warrior Trailer Cases*, J.C.C.P. No. 4455 (Orange County Super. Ct. Feb. 22, 2008);
26 *Cox v. Microsoft Corp.*, No. 105193/2000 (N.Y. Sup. Ct. Feb. 2, 2007); *Dancer v. Catholic*
27 *Healthcare West*, No. CGC 05 445624 (San Francisco County Super. Ct. Jan. 11, 2007); *Sutter*
28 *Health Uninsured Pricing Cases*, No. JC4388 (Sacramento County Super. Ct. Dec. 12, 2006); *In*

1 *re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, No. Civ.A. 99-
2 20593, MDL No. 1203, 2003 WL 21641958, at *9 (E.D. Pa. May 15, 2003); *In re Prudential-*
3 *Bache Energy Income P'ships Sec. Litig.*, No. 888, 1994 WL 202394, at *1-2 (E.D. La. May 18,
4 1994).

5 **D. Overview of Work Performed**

6 49. To provide the Court with review of the work done by LCHB in this case, without
7 requiring the review of our voluminous time records themselves, I divide my firm's work into
8 specific phases that track the progress of the litigation from our initial investigation through
9 settlement.

10 50. *Initial Case Investigation.* LCHB spent 53.6 hours on initial case investigation.
11 Such investigation included the following: Conducting extensive factual and legal research into
12 the merits of the TCPA claims; discussing the facts with our client; conducting research on the
13 Defendant including whether Defendant had been investigated for any prior TCPA violations;
14 pursuing informal discovery, including Plaintiffs' cellular telephone records, data regarding
15 Defendant's calls, relevant caselaw, declaratory rulings by the FCC, and settlement agreements in
16 a series of TCPA actions; and drafting, revising, and filing the Complaint.

17 51. *Litigation and Case Management before this Court.* LCHB spent 61 hours
18 negotiating a case management plan with BOW's counsel, and planning and prosecuting this
19 action in this Court.

20 52. *Settlement Negotiations and Mediations.* LCHB spent 87.9 hours on engaging in
21 settlement discussions and mediations with BOW. The parties began discussing the possibility of
22 settlement in October 2012. In connection with these settlement discussions and mediations,
23 LCHB attorneys spent time doing the following tasks: (a) discussing settlement and mediation
24 with BOW's counsel; (b) discussing the Plaintiffs' mediation strategy with co-counsel; (c)
25 researching proposed mediators and selecting a mediator; (d) taking the lead on drafting the
26 mediation brief; (e) traveling to and attending the full-day mediation; (f) drafting and filing
27 stipulations and proposed orders for extensions of time on the case schedule pending the
28 negotiations; (g) reviewing BOW's informal discovery and information produced in the context

1 of settlement negotiations; and (h) conducting settlement related research such as analyzing other
2 TCPA class action settlements. The requested fee award was negotiated only after the parties
3 reached agreement on all of the other Settlement terms.

4 53. *Confirmatory Discovery and Depositions.* LCHB spent 17.1 hours discussing with
5 BOW settlement-related confirmatory discovery, drafting interrogatories, and taking a 30(b)(6)
6 deposition regarding BOW's call record data and its representations of the scope and the size of
7 the class.

8 54. *Drafting the Settlement and the Motion for Preliminary Approval Papers.*
9 Following the final mediation, LCHB attorneys spent time negotiating the final settlement terms
10 and negotiating, drafting, and revising the Memorandum of Understanding and the Settlement
11 Agreement. LCHB attorneys also took the lead on drafting the Motion for Preliminary Approval,
12 the supplemental briefs in support of preliminary approval, the declaration in support of
13 preliminary approval, the proposed orders regarding preliminary approval, and all of the forms of
14 class notice. LCHB spent 92.2 hours on these tasks.

15 55. *Overseeing Settlement Administration.* LCHB took the lead on obtaining bids from
16 settlement administrators and, along with co-counsel, LCHB worked with the Settlement
17 Administrator on various notice issues including, but not limited, to creating an adequate
18 publication notice plan. LCHB also reviewed draft claims forms and notices that the Settlement
19 Administrator prepared, such as draft scripts for the telephone line and website. LCHB's staff
20 assisted in responding to class member inquiries. LCHB attorneys and staff spent 81.5 hours on
21 these tasks.

22 **E. Careful Assignment of Work**

23 56. Tasks were delegated appropriately among partners, associate attorneys,
24 paralegals, and other staff according to their complexity. The work performed by associate
25 attorneys and paralegals was work that required sufficient knowledge of legal concepts and that I
26 or another partner would have had to perform absent such assistance. The paralegals identified
27 were all qualified to perform substantive legal work based on their training and past experience
28 working for attorneys, including attorneys outside of LCHB's offices. I and other Class Counsel

1 therefore made every effort to litigate this efficiently by reducing duplication of effort and
2 assigning work to the lowest billing timekeepers where feasible.

3 57. The following chart details the time each of these attorneys and the litigation
4 assistants worked on this case and their contribution to LCHB's total lodestar:

5 Attorney/Staff	Total	% of Total	Billing Rate	Lodestar
	Hours	Hours		
6 Jonathan D. Selbin	42.20	10.72%	\$775	\$32,705.00
7 Daniel M. Hutchinson	194.20	49.38%	\$550	\$106,810.00
8 Nicole D. Reynolds	25.00	6.36%	\$435	\$10,875.00
9 Douglas I. 10 Cuthbertson	55.60	14.14%	\$465	\$25,854.00
11 RoseMarie Maliekel	39.00	9.92%	\$375	\$14,625.00
12 Jennifer Rudnick	37.30	9.48%	\$305	\$11,376.50

13 **F. Careful Review of LCHB's Lodestar and Deletion of Duplicative Work**

14 58. Under my supervision and guidance, Ms. Maliekel personally reviewed the time
15 reported for all attorneys, law clerks, paralegals, and other personnel listed in the schedules set
16 forth above. We reduced or eliminated time reported where necessary to ensure that LCHB is not
17 seeking reimbursement for unnecessary duplication of efforts. For example, we deleted time
18 spent simply reviewing work done by other attorneys and billable time spent on routine,
19 housekeeping matters. In addition, we deleted all time billed by: Kelly Dermody, Michael Sobol,
20 Todd Carnam, Ariel Leitner-Zieff, Lionel Lints, Yun Swenson, and Renee Mukherji. The total
21 amount of time we deleted is 16.4 hours. I can therefore confidently assert that the lodestar and
22 hours reported in this declaration are reasonable, particularly in light of our efforts and
23 accomplishments in this litigation.

24 **G. Efforts to Avoid Duplication Among Co-Counsel**

25 59. I, along with Jonathan D. Selbin, have worked closely with co-counsel to divide
26 tasks, ensure efficient case management, and prevent duplication of efforts. By assigning specific
27 tasks among firms, we were able to avoid replicating work. Only where it was necessary to have
28 involvement from all of the firms, such as during the mediations, did such involvement occur.

1 **H. Settlement Administration Costs**

2 60. In addition to the Settlement Fund, Class counsel have agreed to pay for two
3 additional email blasts of the Court-approved Class notice at their own expense to provide Class
4 members with additional reminders of the March 10, 2015 deadline to file requests to stop calls
5 and/or claim forms.

6 **I. Representative TCPA Settlement Cases**

7 61. Attached as **Exhibit B** is a true and correct copy of the ORDER (1) GRANTING
8 JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT [DKT NO.
9 116]; (2) GRANTING CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES, COSTS,
10 AND SERVICE AWARDS [DKT NO. 115] in *AllianceOne Receivables Mgmt., Inc.*, No. 3:08-
11 cv-00248-JAH-WVG (S.D. Cal. Sept. 28, 2012).

12 62. Attached as **Exhibit C** is a true and correct copy of the FINAL JUDGMENT AND
13 ORDER OF DISMISSAL WITH PREJUDICE in *Satterfield v. Simon & Schuster, Inc. et al.*, No.
14 06-cv-2893 (N.D. Cal. Aug. 6, 2010).

15 **J. Class Notice and Reaction**

16 63. The vast majority of the class received the direct mail notice. Before mailing the
17 notices, the Settlement Administrator updated the addresses on the class list through the U.S.
18 Postal Service National Change of Address database. Moreover, for mailed notices that were
19 returned as undeliverable, the Settlement Administrator took additional steps to locate updated
20 address information for, and to re-mail the notice to, such class members, resulting in at least
21 459,692 class members receiving the direct notice.

22 64. Notably, the reaction from the class has been very positive thus far. The deadline
23 for class members to exclude themselves or to submit objections is March 10. As of today, only
24 seven class members have requested to be excluded, and no objections have been submitted.
25 These numbers stand in stark contrast to approximately 13,747 class members who submitted
26 requests to stop calls and/or claims for cash payments.

27 65. The Settlement Administrator will submit a final report on the class notice and
28 claims administration program in connection with final settlement approval.

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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 Francisco, California on February 9, 2015.



Daniel M. Hutchinson