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20 *Attorneys for Plaintiffs and the Proposed Class*

21 UNITED STATES DISTRICT COURT  
22 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
23 OAKLAND DIVISION

24 ABANTE ROOTER AND PLUMBING,  
25 INC., MARK HANKINS, and PHILIP J.  
26 CHARVAT, individually and on behalf of all  
27 others similarly situated,

Plaintiffs,

v.

ALARM.COM INCORPORATED, and  
ALARM.COM HOLDINGS, INC.,

Defendants.

NO. 4:15-cv-06314-YGR

**DECLARATION OF MATTHEW P.  
McCUE IN SUPPORT OF PLAINTIFFS'  
MOTION FOR ATTORNEYS' FEES,  
COSTS, AND SERVICE AWARDS**

JURY TRIAL DEMAND

Complaint Filed: December 30, 2015

Honorable Yvonne Gonzalez Rogers

DATE: August 13, 2019

TIME: 2:00 p.m.

LOCATION: Oakland Courthouse  
Courtroom 1 - 4th Floor

1 I, Matthew P. McCue, declare as follows:

2 1. I make this affidavit in support of Plaintiffs' Motion for Attorneys' Fees, Costs,  
3 and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth  
4 in this declaration, and could testify competently to them if called upon to do so.

5 **The Law Office of Matthew P. McCue's Work on the Case**

6 2. I was involved in every stage of representing Plaintiffs in this case, from pre-trial  
7 investigation, analysis of Plaintiffs' potential claims, drafting and researching the class  
8 certification and summary judgment motions, preparation for and attendance at the class  
9 certification hearing, expert work, review of documents, discovery responses, depositions, and  
10 general preparation for trial. I also participated in settlement negotiations and strategy,  
11 participated in the mediation process, and contributed to preparing the proposed settlement  
12 agreement and motion for preliminary approval.

13 **Challenges Presented by the Litigation**

14 3. I am familiar with the risks involved with prosecuting TCPA class actions. My  
15 co-counsel and I have prosecuted many TCPA class actions that, after our investment of time and  
16 money, resulted in no recovery of costs or attorneys' fees, or recovery far below our lodestar.

17 **My Experience and Qualifications**

18 4. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts,  
19 I am over 18 years of age, am competent to testify and make this affidavit on personal  
20 knowledge. I have extensive experience in the prosecution of class actions on behalf of  
21 consumers.

22 5. I am a 1993 honors graduate of Suffolk Law School in Boston, Massachusetts.  
23 Following graduation from law school, I served as a law clerk to the Justices of the  
24 Massachusetts Superior Court. I then served a second year as a law clerk for the Hon. F. Owen  
25 Eagan, United States Magistrate Judge for the USDC District of Connecticut.

26 6. In 1994, I was admitted to the Bar in Massachusetts. Since then, I have been  
27 admitted to practice before the United States District Court for the District of Massachusetts, the

1 First Circuit Court of Appeals, the United States District Court for the District of Colorado, the  
2 Sixth Circuit Court of Appeals and the United States Supreme Court.

3 7. Following my clerkships, I was employed as a litigation associate with the Boston  
4 law firm of Hanify & King. In 1997, I joined the law firm of Mirick O'Connell as a litigation  
5 associate where I focused my trial and appellate practice on plaintiff's personal injury and  
6 consumer protection law.

7 8. In the summer of 2002, I was recognized by the legal publication Massachusetts  
8 Lawyers Weekly as one of five "Up and Coming Attorneys" for my work on behalf of  
9 consumers and accident victims.

10 9. In November of 2004, I started my own law firm focusing exclusively on the  
11 litigation of consumer class actions and serious personal injury cases.

12 10. I am in good standing in every court to which I am admitted to practice.

13 11. A sampling of other class actions in which I have represented classes of consumers  
14 follows:

15 a. *Mey v. Herbalife International, Inc.*, USDC, D. W. Va., Civil Action No.  
16 01-C-263M. Co-lead counsel with Attorney Broderick and additional co- counsel, prosecuting  
17 consumer class action pursuant to TCPA on behalf of nationwide class of junk fax and  
18 prerecorded telephone solicitation recipients. \$7,000,000 class action settlement preliminarily  
19 approved on July 6, 2007 and granted final approval on February 5, 2008.

20 b. *Mulhern v. MacLeod d/b/a ABC Mortgage Company*, Norfolk Superior  
21 Court, 2005-01619 (Donovan, J.). Representing class of Massachusetts consumers who received  
22 unsolicited facsimile advertisements in violation of the TCPA and G.L. c. 93A. Case certified as  
23 a class action, and I was appointed co-lead counsel with Attorney Edward Broderick by the  
24 Court on February 17, 2006, settlement for \$475,000 granted final approval by the Court on July  
25 25, 2007.

26 c. I served as co-counsel on a Massachusetts consumer telemarketing class  
27 action entitled *Evan Fray-Witzer, v. Metropolitan Antiques, LLC*, NO. 02-5827 Business Session,

1 (Van Gestel, J.). In this case, the defendant filed two Motions to Dismiss challenging the  
2 plaintiff's right to pursue a private right of action and challenging the statute at issue as violative  
3 of the telemarketer's First Amendment rights. Both Motions to Dismiss were denied. Class  
4 certification was then granted and I was appointed co-lead class counsel. Companion to this  
5 litigation, my co-counsel and I successfully litigated the issue of whether commercial general  
6 liability insurance provided coverage for the alleged illegal telemarketing at issue. We  
7 ultimately appealed this issue to the Massachusetts Supreme Judicial Court which issued a  
8 decision reversing the contrary decision of the trial court and finding coverage. *See Terra Nova*  
9 *Insurance v. Fray-Witzer et al.*, 449 Mass. 206 (2007). This case resolved for \$1,800,000.

10 d. I served as co-class counsel in the action captioned *Shonk Land Company,*  
11 *LLC v. SG Sales Company*, Circuit Court of Kanawha County, West Virginia, Civil Action No.  
12 07-C-1800 (multi-state class action on behalf of recipients of faxes in violation of TCPA,  
13 settlement for \$2,450,000, final approval granted in September of 2009.

14 e. I served as co-class counsel in *Mann & Company, P.C. v. C-Tech*  
15 *Industries, Inc.*, USDC, D. Mass., C.A. 1:08CV11312-RGS, class action on behalf of recipients of  
16 faxes in violation of TCPA, settlement for \$1,000,000, final approval granted in January of 2010.

17 f. I served as co-class counsel in *Evan Fray Witzer v. Olde Stone Land Survey*  
18 *Company, Inc.*, Massachusetts Superior Court, Civil Action No. 08-04165 (February 3, 2011)  
19 (final approval granted for TCPA class settlement). This matter settled for \$1,300,000.

20 g. I served as co-class counsel in *Milford & Ford Associates, Inc. and D.*  
21 *Michael Collins vs. Cell-Tek, LLC*, USDC, D. Mass. C. A. 1:09-cv- 11261-DPW, class  
22 action on behalf of recipients of faxes in violation of TCPA, settlement for \$1,800,000, final  
23 approval granted August 17, 2011 (Woodlock, J.).

24 h. I served as co-class counsel in *Collins v. Locks & Keys of Woburn Inc.*,  
25 Massachusetts Superior Court, Civil Action No. 07-4207-BLS2 (December 14, 2011) (final  
26 approval granted for TCPA class settlement). This matter settled for \$2,000,000.

1 i. I was appointed class counsel in *Brey Corp t/a Hobby Works v. Life Time*  
2 *Pavers, Inc.*, Circuit Court for Montgomery County, Maryland, Civil Action No. 349410-V  
3 (preliminary approval granted for TCPA class settlement). This matter settled for \$1,575,000.

4 j. I was appointed class counsel in *Collins, et al v. ACS, Inc. et al, USDC,*  
5 *District of Massachusetts*, Civil Action No. 10-CV-11912 a TCPA case for illegal fax advertising,  
6 which settled for \$1,875,000.

7 k. I was appointed class counsel in *Desai and Charvat v. ADT Security*  
8 *Services, Inc.*, USDC, Northern District of Illinois, Civil Action No. 11-CV-1925, settlement of  
9 \$15,000,000, approved, awarding fees of one third of common fund.

10 l. I was appointed class counsel in *Benzion v. Vivint*, 0:12cv61826, USDC  
11 S.D. Fla., settlement of \$6,000,000 granted final approval in February of 2015.

12 m. I was appointed class counsel in *Kensington Physical Therapy v. Jackson*  
13 *Physical Therapy Partners*, USDC, District of Maryland, 8:11cv02467, settlement of \$4,500,000  
14 granted final approval in February of 2015.

15 n. I was appointed class counsel in *Jay Clogg Realty v. Burger King Corp.*,  
16 USDC, District of Maryland, 8:13cv00662, settlement of \$8.5 million granted final approval in  
17 May of 2015.

18 o. I was appointed class counsel in *Charvat v. AEP Energy*, 1:14cv03121 ND  
19 Ill, class settlement of \$6 million granted final approval on September 28, 2015.

20 p. I was appointed class counsel in *Thomas Krakauer v. Dish Network,*  
21 *L.L.C.*, USDC, MDNC, Civil Action No. 1:14-CV-333 on September 9, 2015. I was co-trial  
22 counsel in the case which resulted in a jury verdict in favor of plaintiff and the class of  
23 \$20,446,400 on January 19, 2017. (Dkt. 292). On May 22, 2017, this amount was trebled by the  
24 Court after finding that Dish Network's violations were "willful or knowing", for a revised  
25 damages award of \$61,339,200. (Dkt. No. 338).

1           q.       I was appointed as class counsel in *Dr. Charles Shulruff, D.D.S. v. Inter-*  
2 *med, Inc.*, 1:16-cv-00999, ND Ill, class settlement of \$400,000 granted final approval on  
3 November 22, 2016.

4           r.       I was appointed class counsel in *Toney v. Quality Resources, Inc., Cheryl*  
5 *Mercuris and Sempris LLC*, 13-cv-00042, in which a TCPA class settlement was granted final  
6 approval on December 1, 2016 with TCPA settlement in the amount of \$2,150,00 with one of  
7 three defendants an assignment of rights against defendant's insurance carrier. The case  
8 continues against the two non-settling defendants.

9           s.       I was appointed class counsel in *Bull v. US Coachways, Inc.*, 1:14-cv-  
10 05789, in which a TCPA class settlement was finally approved on November 11, 2016 with an  
11 agreement for judgment in the amount of \$49,932,375 with an assignment of rights against  
12 defendant's insurance carrier.

13           t.       I was appointed class counsel in *Smith v. State Farm Mut. Auto. Ins. Co. ,*  
14 *et. al.*, USDC, ND. Ill., 1:13-cv-02018, TCPA class settlement of \$7,000,000.00 granted final  
15 approval on December 8, 2016.

16           u.       I was appointed class counsel in *Mey v. Frontier Communications*  
17 *Corporation*, USDC, D. Ct., 3:13-cv-1191-MPS, a TCPA class settlement of \$11,000,000  
18 granted preliminary approval on January 26, 2017.

19           v.       I was appointed class counsel in *Biringer v. First Family Insurance, Inc.*,  
20 USDC, ND. Fla., a TCPA class settlement of \$2,900,000 granted final approval on April 24,  
21 2017.

22           w.       I was appointed class counsel in *Abramson v. Alpha Gas and Electric,*  
23 *LLC*, USDC, SD. NY., 7:15-cv-05299-KMK, a TCPA class settlement of \$1,100,000 granted  
24 final approval on May 3, 2017.

25           x.       I was appointed class counsel in *Heidarpour v. Central Payment Co.*,  
26 USDC, MD. Ga., 16-cv-01215, a TCPA class settlement of \$6,500,000 granted final approval on  
27 May 4, 2017.

1           y.       I was appointed class counsel in *Abante Rooter and Plumbing, Inc. v. New*  
2 *York Life Insurance Company*, USDC, SD. NY., 1:16-cv-03588-BCM, a TCPA class settlement  
3 of \$3,250,000 granted preliminary approval on May 18, 2017.

4           z.       I was appointed class counsel in *Abramson v. CWS Apartment Home, LLC*,  
5 USDC, WD. Tex., 16-cv-01215, a TCPA class settlement of \$368,000.00 granted final approval  
6 on May 19, 2017.

7           aa.      I was appointed class counsel in *Charvat v. Elizabeth Valente, et al.*,  
8 USDC, NDIL, 1:12-cv-05746, \$12,500,000 TCPA settlement granted preliminary approval on  
9 July 6, 2017.

10          bb.      I was appointed class counsel in *Mey v. Got Warranty, Inc., et. al.*, USDC,  
11 NDWV., 5:15-cv-00101-JPB-JES, a TCPA class settlement of \$650,000 granted final approval  
12 on July 26, 2017.

13          cc.      I was appointed class counsel in *Mey v. Patriot Payment Group, LLC*,  
14 USDC, NDWV., 5:15-cv-00027-JPB-JES, a TCPA class settlement of \$3,700,000 granted final  
15 approval on July 26, 2017.

16          dd.      I was appointed class counsel in *Charvat and Wheeler v. Plymouth Rock*  
17 *Energy, LLC*, et al, USDC, EDNY, 2:15-cv-04106-JMA-SIL, a TCPA class settlement of  
18 \$1,675,000 granted preliminary approval on September 15, 2017.

19          ee.      I was appointed class counsel in *Fulton Dental, LLC v. Bisco, Inc.*, USDC,  
20 NDIL, 1:15-cv-11038. TCPA class settlement for \$262,500 granted preliminary approval on  
21 November 6, 2017.

22          ff.      I was appointed class counsel in *Abante Rooter and Plumbing, Inc. v.*  
23 *Birch Communications, Inc.*, USDC, NDGA, 1:15-cv-03262-AT. TCPA class settlement of  
24 \$12,000,000 granted final approval on December 14, 2017.

25          12.     I am in good standing in every court to which I am admitted to practice.

26          13.     Plaintiffs' counsel are experienced class action practitioners with particular  
27 expertise in the area of TCPA cases. We pursued this case vigorously.

**Attorneys' Fees**

1  
2 14. Class Counsel have received no payment for their fees and costs. Since beginning  
3 work on this case in December of 2015, I worked with no guarantee of being compensated for its  
4 time and efforts. Payment of my fees has always been contingent on successfully obtaining relief  
5 for the Plaintiffs and class members. As a result, there was a substantial risk of non-payment,  
6 particularly in light of the legal challenges involved in litigating this case. Work on this case has  
7 necessarily been to the exclusion of work on other matters that likely would have generated fees.  
8 I have also been denied use of the fees it earned over the course of this case.

9 15. I have reviewed my billing records and reduced and eliminated time where  
10 appropriate. I made reductions where time arguably could have been more efficiently spent.

11 16. I did not include any time spent preparing this motion in my lodestar. The lodestar  
12 also does not include the work we will do after completion of this motion, which will include  
13 working with the settlement administrator, preparing the motion for final approval and attending  
14 the hearing, and communicating with class members.

15 17. I spent 439.7 hours on this file throughout the course of this case.

16 18. My billable rate is \$700 and has been the same for a number of years. Multiple  
17 courts have approved my billable rate in other nationwide TCPA class actions. *See e.g., Mey v.*  
18 *Frontier Communications Corporation*, No. 3:13-cv-1191-MPS (D. Ct. June 9, 2017) (court  
19 approves attorneys' fees based on lodestar hourly rate of \$700); *Heidarpour v. Central Payment*  
20 *Co.*, No. 16-cv-01215 (M.D. Ga. May 4, 2017) (same); *Mey v. Interstate National Dealer*  
21 *Services, Inc.*, No. 14-01846 (N.D. Ga. June 8, 2016) (same); *Jay Clogg Realty Group, Inc. v.*  
22 *Burger King Corporation*, No. 13-cv-00662 (D. Md. April 15, 2015) (same); *Kensington*  
23 *Physical Therapy, Inc. v. Jackson Therapy Partners, LLC*, No. 11-02467 (D. Md. Feb. 12, 2015)  
24 (same).

25 19. The hours I have spent on this litigation, when calculated at a rate of \$700, creates  
26 a total lodestar of \$307,755.00.



**Costs**

20. Through the date of this submission, I have incurred over \$63,872.15 in unreimbursed litigation costs in prosecuting this case. These costs are summarized in the Declaration of Beth E. Terrell.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED in Natick, Massachusetts, this 18th day of March, 2019.

/s/ Matthew P. McCue, Admitted Pro Hac Vice  
Matthew P. McCue, Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on March 18, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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*Attorneys for Defendants Alarm.com Incorporated and Alarm.com Holdings, Inc.*

DATED this 18th day of March, 2019.

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