

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

MATTHEW HENNIE, on behalf of	:	
himself and others similarly situated,	:	Civil Action File No.
	:	1:18-cv-2045-WMR
Plaintiff,	:	
	:	
v.	:	
	:	
ICOT HEARING SYSTEMS, LLC	:	
D/B/A LISTENCLEAR and ICOT	:	
HOLDINGS, LLC,	:	
	:	
Defendants.	:	

**DECLARATION OF MATTHEW P. MCCUE IN SUPPORT OF
PLAINTIFF’S MOTION FOR ATTORNEYS’ FEES, COSTS, AND
INCENTIVE AWARDS**

I, Matthew P. McCue, declare as follows:

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

Work on the Case

2. I was involved in every stage of representing Plaintiff in this case, from pre-trial investigation, analysis of Plaintiff's potential claims, drafting and researching motions, review of documents, discovery responses, depositions, and general preparation for settlement, class certification and trial. I also participated in settlement negotiations and strategy, participated in the mediation process, and contributed to preparing the proposed settlement agreement and motion for preliminary approval.

3. Although this particular litigation was filed on May 9, 2018 (DE 1), the efforts of Class Counsel to hold Listen Clear to account for its telemarketing practices actually began in December of 2017, when the same legal team filed *Charvat v. Listen Clear*, 4:17cv00245 (S.D.Ga. 12/14/17). That case was ultimately dismissed because the call records as to Mr. Charvat were located overseas and could not be recovered. During the course of that litigation, however, Class Counsel became aware of a telemarketing vendor used by Listen Clear to call other consumers, including Mr. Hennie. Accordingly, the *Charvat* litigation was dismissed, and the *Hennie* litigation was filed that ultimately led to the proposed settlement. Accordingly, Class Counsel have been working on TCPA litigation involving Listen Clear since prior to December of 2017.

4. In the course of prosecuting this case, I have incurred \$8,867 in costs.

My Experience and Qualifications

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

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

7. In 1994, I was admitted to the Bar in Massachusetts. Since then, I have been admitted to practice before the United States District Court for the District of Massachusetts, the First Circuit Court of Appeals, the United States District Court for the District of Colorado, the Sixth Circuit Court of Appeals and the United States Supreme Court.

8. Following my clerkships, I was employed as a litigation associate with the Boston law firm of Hanify & King. In 1997, I joined the law firm of Mirick

O’Connell as a litigation associate where I focused my trial and appellate practice on plaintiff’s personal injury and consumer protection law.

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

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

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

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

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

b. *Mulhern v. MacLeod d/b/a ABC Mortgage Company*, Norfolk Superior Court, 2005-01619 (Donovan, J.). Representing class of Massachusetts

consumers who received unsolicited facsimile advertisements in violation of the TCPA and G.L. c. 93A. Case certified as a class action, and I was appointed co-lead counsel with Attorney Edward Broderick by the Court on February 17, 2006, settlement for \$475,000 granted final approval by the Court on July 25, 2007.

c. I served as co-counsel on a Massachusetts consumer telemarketing class action entitled *Evan Fray-Witzer, v. Metropolitan Antiques, LLC*, NO. 02-5827 Business Session, (Van Gestel, J.). In this case, the defendant filed two Motions to Dismiss challenging the plaintiff's right to pursue a private right of action and challenging the statute at issue as violative of the telemarketer's First Amendment rights. Both Motions to Dismiss were denied. Class certification was then granted and I was appointed co-lead class counsel. Companion to this litigation, my co-counsel and I successfully litigated the issue of whether commercial general liability insurance provided coverage for the alleged illegal telemarketing at issue. We ultimately appealed this issue to the Massachusetts Supreme Judicial Court which issued a decision reversing the contrary decision of the trial court and finding coverage. *See Terra Nova Insurance v. Fray-Witzer et al.*, 449 Mass. 206 (2007). This case resolved for \$1,800,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation of Counsel

14. In light of the risks inherent in class action litigation, including TCPA class action litigation, as well as my experience detailed above, it is my opinion that the pending settlement is an excellent result for consumers and members of

the class. The settlement is well within the range of other TCPA settlements on a dollars-per-class-member basis.

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

SIGNED UNDER PENALTIES OF PERJURY THIS 8th DAY OF JULY,
2019.

Dated: July 8, 2019

By: */s/ Matthew P. McCue*

Matthew P. McCue