

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ABANTE ROOTER AND PLUMBING,
INC., individually and on behalf of all others
similarly situated,

Plaintiff,

v.

NEW YORK LIFE INSURANCE
COMPANY

Defendant.

NO. 1:16-cv-03588

**DECLARATION ANTHONY I. PARONICH IN SUPPORT OF PLAINTIFF'S
MOTION FOR SERVICE AWARD, ATTORNEYS' FEES, AND COSTS**

1. I make this affidavit in support of the Plaintiff's Motion for Service Award, Attorneys' Fees and Costs.
2. 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 am in good standing in every court to which I am admitted to practice.

Qualification of Counsel

3. I have extensive experience in the prosecution of class actions on behalf of consumers, particularly claims under the Telephone Consumer Protection Act, 47 U.S.C. §227.
4. I am a 2010 graduate of Suffolk Law School. In 2010, I was admitted to the Bar in Massachusetts. Since then, I have been admitted to practice before the Federal District Court for the District of Massachusetts. From time to time, I have appeared in

other State and Federal District Courts *pro hac vice*. I am in good standing in every court to which I am admitted to practice.

5. I am a partner at Broderick & Paronich, P.C. in Boston, Massachusetts.

6. A sampling of other class actions in which I have participated regarding classes of consumers follows:

- i. I assisted class counsel in an 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).
- ii. I assisted 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.
- iii. I assisted 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 \$1.3 million.
- iv. I assisted 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.).
- v. I assisted 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.

- vi. 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.
- vii. 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.
- viii. I was appointed class counsel in Desai and Charvat v. ADT Security Services, Inc., USDC, NDIL, Civil Action No. 11-CV-1925, settlement of \$15,000,000, approved, awarding fees of one third of common fund.
- ix. I was appointed class counsel in Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC, 8:11-cv-02467 (D. MD. February 12, 2015), TCPA class settlement of \$4,500,000 approved, awarding \$1,500,000 in fees plus expenses and approving from the bench my hourly rate of \$425.
- x. I was appointed class counsel in Jay Clogg Realty Group, Inc. v. Burger King Corporation, 13-cv-00662 (D. MD. April 15, 2015) (Hazel, J.), TCPA class settlement of \$8,500,000 approved, awarding \$2,833,333.00 in fees plus expenses and approving from the bench my hourly rate of \$425.
- xi. I was appointed as class counsel in a contested class certification in a Do Not Call case arising under the TCPA in Krakauer v. Dish Network, L.L.C.,

USDC MDNC, Civil Action No. 1:14-CV-333 on September 9, 2015. After a five-day trial, the jury returned a verdict in favor of plaintiff and the class of \$20,446,400 on January 19, 2017. (Dkt. 292)

- xii. I was appointed class counsel in Mey v. Interstate National Dealer Services, Inc., 1:14-cv-01846-ELR, NDGA, which resulted in final approval of a TCPA class settlement of \$4,200,000 on June 8, 2016, and entry of a final judgment on June 15, 2016.
- xiii. I was appointed class counsel Charvat, et. al. v. National Guardian Life Insurance Company, 15-cv-43-JDP (WDWI) which resulted in a TCPA class settlement for \$1,500,000 which was granted final approval on August 4, 2016.
- xiv. 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.
- xv. I was appointed as class counsel in Charvat v. AEP Energy, 1:14cv03121 ND Ill, class settlement of \$6,000,000 granted final approval on September 28, 2015.
- xvi. 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.
- xvii. I was appointed as class counsel in Toney. v. Sempris, LLC, et. al., 1:13-cv-00042, class settlement of \$2,100,000.00 granted final approval on December

1, 2016 (ND Ill., Dkt. No. 311).

xviii. I was appointed as class counsel in Smith v. State Farm Mut. Auto. Ins. Co., et. al., 1:13-cv-02018, class settlement of \$7,000,000.00 granted final approval on December 8, 2016 (ND Ill., Dkt. No. 338).

xix. I've been appointed class counsel in Abramson v. CWS Apartment Home, LLC, 16-cv-01215, a class settlement of \$368,000.00 granted preliminary approval on January 13, 2017 (W.D. Tex. Dkt. No. 63).

Background of Litigation and Work to Achieve Settlement

5. Through discovery, the Plaintiff obtained Defendants' telemarketing policies and practices, correspondence and contracts relating to the relationship between Mr. Hariri and LiveTransfers, as well as the calling records of all pre-recorded calls that LiveTransfers made for Mr. Hariri during their relationship.

6. Plaintiff then obtained an expert witness to evaluate the calling records to identify the scope of the putative class. Plaintiff's expert determined that 25,830 individuals received pre-recorded calls on their cellular telephones or received multiple calls to a residential number that was on the National Do-Not-Call Registry.

7. By the time the parties commenced settlement negotiations, they fully understood the scope of the class, the strengths and weaknesses of their respective claims and defenses, and the extent of class wide damages.

8. The parties mediated with the Honorable Morton Denlow (Ret.) of JAMS in Chicago and that mediation resulted in the proposed settlement that is before this Court.

9. The Plaintiff assisted with the drafting of the Complaint, provided information regarding their interactions with Defendant, and was ready and willing to respond to discovery, sit for depositions, and testify at trial. Plaintiff's services were instrumental to the initiation and prosecution of this action, and they expended considerable time and effort to assist Class Counsel with this case. Plaintiff not only informed counsel of the predicate facts, they also provided counsel with relevant documents in its possession and timely answered inquiries from their attorneys.

10. Assuming the Court grants the requested attorneys' fees, litigation expenses, and notice and settlement administration fees, Plaintiff estimate that each claiming Settlement Class member could receive up to \$815, assuming a 10% claims rate, which exceeds the complete recovery a plaintiff could receive for a negligent violation of the TCPA. *See* 47 U.S.C. § 227(b)(3)(B) (allowing for \$500).

11. In fact, to recover more than \$500 a plaintiff has to demonstrate that a defendant "willfully or knowingly violated this subsection", and even then, an increase from \$500 is within "the discretion of the Court". *See* 47 U.S.C. § 227(b)(3)(C). Such a finding would be unlikely in this action given the evidence regarding the telemarketing campaign at issue, which conflicted with NYLIC's policies regarding outbound telemarketing calls.

Background and Circumstances Surrounding the Fee Application

12. Class Counsel are experienced class action litigators and have litigated and settled dozens of cases, including TCPA cases.

13. Class Counsel undertook representation of this matter on a pure

contingency-fee basis, agreeing to advance all necessary expenses and to receive a fee only if there was a recovery. As a result, they shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment, all while devoting time to this case that otherwise could have been spent on other matters.

14. Class Counsel undertook substantial risk in this litigation.

15. The primary risk that Plaintiff faced was that they could lose on the merits.

16. NYLIC steadfastly denies liability for pre-recorded calls made by a third-party platform, and asserts that it should not be vicariously liable under agency theories. If NYLIC is able to convince this Court, or a jury, that Plaintiff's vicarious liability allegations were overstated or unfounded, NYLIC would eliminate the lawsuit altogether.

17. Class Counsel have actively litigated this case, and the time they dedicated to this case supports its requested fee. Class Counsel diligently reviewed NYLIC's records and records subpoenaed from third parties; pursued expert discovery to analyze calling records and databases to identify class members and calculate its damages and deposed key witnesses.

18. This strategy permitted Class Counsel to obtain information about the strengths and weaknesses of Plaintiff's claims efficiently and effectively.

Class Counsel Costs

19. My firm has incurred \$29,871.00 of costs prosecuting this action, including an estimate of what will be incurred through the final approval hearing. This amount is comprised principally of the amount paid to its experts to analyze Defendant's

data, identify class members, and determine the number of alleged TCPA violations. The remaining amount includes general litigation expenses including travel to depositions and hearings, transcript costs, and mediation expenses.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY THIS 23rd DAY OF
JUNE, 2017.

/s/ Anthony I. Paronich
Anthony I. Paronich