

**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 EDWARD A. BRODERICK 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. ("TCPA"). As a result of my extensive experience litigating TCPA class claims, I am well-aware of the significant time and resources needed to litigate such actions, and my firm possesses the resources necessary to prosecute these actions successfully.

4. I am a 1993 graduate of Harvard Law School. Following graduation from law school, I served as a law clerk to the Honorable Martin L.C. Feldman, United States District Judge in the Eastern District of Louisiana.

5. Following my clerkship, from 1994 to December 1996, I was an associate in the litigation department of Ropes & Gray in Boston, where I gained class action experience in the defense of a securities class action, Schaeffer v. Timberland, in the United States District Court in New Hampshire, and participated in many types of complex litigation.

6. From January 1997 to March 2000, I was an associate with Ellis & Rapacki, a three-lawyer Boston firm focused on the representation of consumers in class actions.

7. In March 2000, I co-founded the firm of Shlansky & Broderick, LLP, focusing my practice on complex litigation and the representation of consumers.

8. In 2003, I started my own law firm focusing exclusively on the litigation consumer class actions.

9. A sampling of other class actions in which I have represented classes of consumers and been appointed class counsel follows:

- i. In re General Electric Capital Corp. Bankruptcy Debtor Reaffirmation Agreements Litigation (MDL Docket No. 1192) (N.D. Ill) (nationwide class action challenging reaffirmation practices of General Electric Capital Corporation, settlement worth estimated \$60,000,000.)
- ii. Hurley v. Federated Department Stores, Inc., et al, USDC D. Mass. Civil Action No. 97-11479-NG (nationwide class action challenged bankruptcy

reaffirmation practices of Federated Department Stores and others;
\$8,000,000 recovery for class.)

- iii. Valerie Ciardi v. F. Hoffman LaRoche, et al, Middlesex Superior Court Civil Action No. 99-3244D, (class action pursuant to Massachusetts Consumer Protection Act, M.G.L. c. 93A brought on behalf of Massachusetts consumers harmed by price-fixing conspiracy by manufactures of vitamins; settled for \$19,600,000.)
- iv. Shelah Feiss v. Mediaone Group, Inc, et al, USDC N. District Georgia, Civil Action No. 99-CV-1170, (multistate class action on behalf of consumers; estimated class recovery of \$15,000,000--\$20,000,000.)
- v. Mey v. Herbalife International, Inc., Ohio County Circuit Court (West Virginia), Civil Action No. 01-cv-263. \$7,000,000 TCPA class action settlement granted final approval on February 5, 2008 following the granting of a contested class certification motion.
- vi. Mulhern v. MacLeod d/b/a ABC Mortgage Company, Norfolk Superior Court (Massachusetts), Civil Action No. 05-01619-BLS. TCPA class settlement of \$475,000 following the granting of a contested class certification motion, granted final approval by the Court on July 25, 2007.
- vii. Evan Fray-Witzer, v. Metropolitan Antiques, LLC, Suffolk Superior Court (Massachusetts), Civil Action No. 02-5827-BLS. After the granting of a contested class certification motion, a companion case went to the Massachusetts Supreme Judicial Court, which issued a decision finding insurance coverage. *See* Terra Nova Insurance v. Fray-Witzer et. al., 449

Mass. 206 (2007). There was then a TCPA class settlement of \$1,800,000 which was granted final approval.

- viii. Shonk Land Company, LLC v. SG Sales Company, Circuit Court of Kanswaha County (West Virginia), Civil Action No. 07-C-1800 TCPA class settlement for \$2,450,000, final approval granted in September of 2009.
- ix. Mann & Company, P.C. v. C-Tech Industries, Inc., USDC, D. Mass., Civil Action No. 1:08-CV-11312-RGS, TCPA class settlement of \$1,000,000, final approval granted in January of 2010.
- x. Evan Fray Witzer v. Olde Stone Land Survey Company, Inc., Suffolk Superior Court (Massachusetts), Civil Action No. 08-04165. TCPA class settlement \$1,300,000 granted final approval on February 3, 2011.
- xi. Milford & Ford Associates, Inc. and D. Michael Collins vs. Cell-Tek, LLC, USDC, D. Mass., Civil Action No. 1:09-cv-11261-DPW. TCPA class settlement of \$1,800,000, final approval granted August 17, 2011.
- xii. Collins v. Locks & Keys of Woburn, Inc., Suffolk Superior Court (Massachusetts), Civil Action No. 07-4207-BLS2, TCPA class settlement of \$2,000,000 following the granting of a contested class certification motion, granted final approval on December 14, 2011.
- xiii. Brey Corp t/a Hobby Works v. Life Time Pavers, Inc., Circuit Court for Montgomery County (Maryland), Civil Action No. 349410-V, TCPA class settlement of \$1,575,000 granted final approval in March of 2012.
- xiv. Collins, et al v. ACS, Inc. et al, USDC, D. Mass., Civil Action No. 10-CV-

- 11912, TCPA class settlement \$1,875,000 granted final approval on September 25, 2012.
- xv. Desai and Charvat v. ADT Security Services, Inc., USDC, ND. Ill., Civil Action No. 11-CV-1925, TCPA class settlement of \$15,000,000 granted final approval on June 21, 2013.
- xvi. Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC, USDC, D. MD, Civil Action No. 11-CV-02467, TCPA class settlement of \$4,500,000 granted final approval on February 12, 2015.
- xvii. I was appointed class counsel in Benzion v. Vivint, Inc., USDC, SDFL, Civil Action No. 0:12-cv-61821-WJZ, TCPA class settlement of \$6,000,000 granted final approval on February 23, 2015.
- xviii. Jay Clogg Realty Group, Inc. v. Burger King Corporation, USDC, D. MD., Civil Action No. 13-cv-00662, TCPA class settlement of \$8,500,000 granted final approval on April 15, 2015.
- xix. Charvat v. AEP Energy, Inc., USDC, ND. Ill., 1:14-cv-03121, TCPA class settlement of \$6,000,000 granted final approval on September 28, 2015.
- xx. Mey v. Interstate National Dealer Services, Inc., USDC, ND. Ga., 1:14-cv-01846-ELR, TCPA class settlement of \$4,200,000 granted final approval on June 8, 2016.
- xxi. Philip Charvat and Ken Johansen v. National Guardian Life Insurance Company, USDC, WD. Wi., 15-cv-43-JDP, TCPA class settlement for \$1,500,000 granted final approval on August 4, 2016.
- xxii. Bull v. US Coachways, Inc., USDC, ND. Ill., 1:14-cv-05789, TCPA class

settlement finally approved on November 11, 2016 with an agreement for judgment in the amount of \$49,932,375 and an assignment of rights against defendant's insurance carrier.

- xxiii. Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC, et al., USDC, ND. Ill., 1:13-cv-00042, TCPA class settlement of \$2,150,000 was granted final approval on December 1, 2016 with one of three defendants, and an assignment of rights against defendant's insurance carrier. The case continues against the two non-settling defendants.
- xxiv. 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.
- xxv. 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.
- xxvi. Mey v. Got Warranty, Inc., et. al., USDC, ND. WV., 5:15-cv-00101-JPB-JES, a TCPA class settlement of \$650,000 granted preliminary approval on April 6, 2017.
- xxvii. Mey v. Patriot Payment Group, LLC, USDC, ND. WV., 5:15-cv-00027-JPB-JES, a TCPA class settlement of \$3,700,000 granted preliminary approval on April 6, 2017.
- xxviii. Biringer v. First Family Insurance, Inc., USDC, ND. Fla., a TCPA class settlement of \$2,900,000 granted final approval on April 24, 2017.
- xxix. 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.

- xxx. 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.
- xxxi. 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.
- xxxii. 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.
- xxxiii. Thomas Krakauer v. Dish Network, L.L.C., USDC MDNC, Civil Action No. 1:14-CV-333 on September 9, 2015. Following a contested class certification motion, this case went to trial in January of 2017 returning a verdict of \$20,446,400. 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).
- xxxiv. Abante Rooter and Plumbing, Inc. v. Alarm.com Incorporated and Alarm.com Holdings, Inc., USDC, NDCA, 4:15-cv-06314. Class certification in TCPA case granted on June 5, 2017.
- xxxv. Mey v. Venture Data, LLC and Public Opinion Strategies, USDC, NDWV, 5:14-cv-123. Class certification in TCPA case granted on June 6, 2017.

Background and Circumstances Surrounding the Fee Application

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

11. 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.

12. Class Counsel undertook substantial risk in this litigation.

Class Counsel Costs

13. 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/ Edward A. Broderick
Edward A. Broderick