

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re Collecto, Inc. Telephone
Consumer Protection Act (TCPA)
Litigation

Master No. 1:14-md-2513-RGS
Individual Case No. 1:14-cv-10478-RGS

This Document Relates To:
All Member Actions

**DECLARATION OF J. ANDREW MEYER SUPPORTING
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL**

I, J. Andrew Meyer, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am an attorney duly admitted to practice law in the state of Florida and I am admitted *pro hac vice* to practice before this Court. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. The facts herein stated are true of my own personal knowledge and if called to testify to such facts, I could and would do so competently.

2. I am a member of the Morgan & Morgan Complex Litigation Group which focuses its practice on representation of consumers in class actions brought pursuant to Fed. R. Civ. P. 23.

3. I am an experienced class action attorney who has since 2005 focused my practice on consumer class actions on behalf of plaintiffs. I have litigated complex class action cases in state and federal courts throughout the country, with those cases ranging from class actions involving consumer products and consumer protection statutes, to civil rights class actions and insurance and banking class actions brought on behalf of consumers. I have served or been court appointed as class counsel in a number of class action cases. I was appointed co-lead counsel *In re TracFone Unlimited Service Plan Litigation*, Case No. 13-cv-03440-EMC (District Court for the Northern District of California), a case involving allegations of deceptive trade practices in the advertising of wireless service plans. I was appointed co-lead class counsel in *Paugh v.*

Walgreen Company, Case No. 12-cv-21229-JEM (District Court for the Southern District of Florida), a case involving allegations of deceptive trade practices in the labeling of a food product, and appointed as class counsel *In re Black Farmers Discrimination Litigation*, Case No. 08-ML-0511-PLF (District Court for the District of Columbia), a case resulting in a \$1.2 billion settlement for farmers subjected to discrimination by the USDA. I served as class counsel in *DeHoyos v. Allstate Corp.*, Case No. 01-CA-1010-FB (District Court for the Western District of Texas), a case involving a class of African-American and Hispanic insureds alleging racial discrimination in the underwriting of homeowners' insurance. I was appointed by the court to serve as a member of the Plaintiffs' Steering Committee in the case of *In Re: Apple iPhone 3G and 3GS "MMS" Marketing and Sales Practices Litigation*, MDL No. 2116 (District Court for the Eastern District of Louisiana). In the state court in Florida, I was appointed as co-lead class counsel in *Algarin v. Tivoli Community Developers, Inc.*, Case No. 2008-CA-000193-O (Florida 9th Judicial Circuit Court, Orange County), which involved a class of homeowners alleging they had been misled into purchasing homes located on a former WWII bombing range. Also, in Florida state court, I was appointed as co-lead class counsel in *Lieber v. Bank of America, N.A.*, Case No. 2012-3622-CI-91S (Florida 6th Judicial Circuit Court, Pinellas County), a case involving allegations of unlawful debt collection activity by a national bank. I have been involved in a number of class action cases brought on behalf of elderly consumers who alleged they were duped into purchasing certain deferred annuity products, with one notable example being *Healey v. Allianz Life Ins. Co. of North Am.*, Case No. 05-cv-8908 (District Court for the Central District of California). I was appointed co-lead class counsel in a case concerning alleged violations of the FDCPA and FCCPA, *Narvaez v. Law Offices of Antonio Duarte, III, P.A.*, Case No. 8:14-cv-01646 (District Court for the Middle District of Florida), and was appointed as co-lead class counsel in a case involving allegations that a timeshare developer violated the Fair Credit Reporting Act, *Best v. Bluegreen Corp.*, Case No. 9:14-cv-80929 (District Court for the Southern District of Florida). In addition to the present case, I have prosecuted a number of TCPA cases, both on a class basis and on an individual basis, with my most recent TCPA case being *Buehler v. Synchrony Bank*, Case No. 8:16-cv-02628 (District

Court for the Middle District of Florida). In addition to serving as co-lead counsel in the present case, I have recently been appointed, and am continuing to serve as, co-class counsel in a case involving allegations that an insurance company has violated Florida's Personal Injury Protection ("PIP") laws by reducing PIP benefits on grounds not supported by relevant Florida Statutes, *AA Suncoast Chiropractic Clinic, P.A. v. Progressive American Insurance Company, et al.*, Case No. 8:15-cv-02543 (District Court for the Middle District of Florida). Finally, I am currently serving as sole lead class counsel in a case involving alleged violations of the FDCPA and FCCPA, *Patterson et al vs. Greenspoon Marder, P.A*, Case No. 0:16-cv-60025-KMW (District Court for the Southern District of Florida).

4. As outlined in the declaration of my co-lead counsel in this action, Mr. David Parisi, the present case has been extensively litigated, and the settlement agreement we have submitted to the Court for preliminary approval has been negotiated with the benefit of a fulsome record. Not only did my co-counsel and I have the benefit of answers to extensive written discovery from Collecto prior to engaging in settlement negotiations, but we also had taken numerous depositions of Collecto's designated representatives, deposed Collecto's TCPA expert, and opposed a motion for summary judgment all before negotiating the terms of the present settlement.

5. In addition, my co-counsel and I attended mediation on two separate occasions, and with the assistance of two experienced and well-respected mediators, our settlement negotiations with Collecto were always conducted at arm's length and in good faith. The parties did not negotiate or agree upon any attorney's fee award and only discussed a potential upper limit on class representative incentive awards until after all material terms of the present settlement agreement had been agreed upon.

6. Throughout the settlement process and before finally entering into the Settlement Agreement that is the subject of the motion for preliminary approval now, Mr. Parisi and I carefully weighed: (1) the benefits to Plaintiffs and the Class under the terms of this Settlement Agreement; (2) the attendant risks and uncertainty of litigation; (3) Defendant's vigorous defense of the litigation and continued denial of liability, as well as the resources available to the

Defendant to satisfy any judgment, particularly on a class-wide basis; (4) the desirability of consummating this Settlement Agreement to ensure that the Class received a fair and reasonable Settlement, without punishing or potentially bankrupting the company; and (5) providing Plaintiff and Class Members prompt relief.

7. In sum, the parties have vigorously litigated and investigated this matter since its inception. The proposed settlement comes only after many discovery disputes, challenges to the merits, analysis of certification factors and investigation into Collecto's insurance coverage and ability to pay a potential judgment. Given the information learned from discovery, the strengths and weakness of the defenses asserted by Defendant, and the inherent risks of trial and a litigated motion for class certification, all compared to the benefits achieved for the class, Mr. Parisi and I believe the Settlement Agreement is fair, reasonable and adequate. The results obtained on behalf of the class as part of this settlement provide significant benefits to class members, and based upon our collective experience in litigating consumer class action cases, we wholeheartedly believe this Settlement Agreement is in the best interest of class members.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of July, 2017, in Largo, Florida.

/s/ J. Andrew Meyer
J. Andrew Meyer, Esq.

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Master No. 1:14-md-2513-RGS
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DECLARATION OF DAVID C. PARISI SUPPORTING
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL

I, David C. Parisi, declare as follows:

1. I am a partner in the law firm of Parisi & Havens LLP and am responsible for the handling of this litigation at my firm. I am counsel of record for Plaintiff John Lofton. I am a member of the Bar of the State of California. I am admitted *pro hac vice* to practice before this Court. I make this declaration based upon my own personal knowledge. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. If called to testify, I could and would testify to the facts contained herein.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement and Release of Claims among the parties in this action. Exhibit 1 includes the following Exhibits:

- A. Proposed Preliminary Approval Order
- B. Class Notice with Claim Form
- C-1. Long Form Notice
- C-2. Claim Form on website
- D. Proposed Final Approval Order

3. This litigation began with three separate class actions. On July 16, 2013, John Lofton filed a class action against Collecto, Inc. alleging violations of the Telephone Consumer Protection Act (47 U.S.C. § 227) ("TCPA"). On July 23, 2013, Ralph and Richard Davenport

filed a similar TCPA class action against Collecto. Then on August 13, 2013, Robert Pegg filed a similar TCPA class action against Collecto. Plaintiff Lofton filed a motion to transfer and consolidate with the Judicial Panel on Multidistrict Litigation which was granted by the JPML. The actions were then assigned to the Hon. Richard G. Stearns in February 2014. With an Order entered February 20, 2014, the Hon. Richard G. Stearns coordinated these actions for pretrial purposes under the caption *In re: Collecto, Inc., Telephone Consumer Protection Act (TCPA) Litigation*.

4. With an order entered May 7, 2014, I and J. Andrew Meyer were appointed co-lead counsel for the plaintiffs.

5. Collecto initially moved to stay this case in anticipation of the FCC's then-pending order on the definition of an "automatic telephone dialing system" under 47 U.S.C. § 227(a)(1). We successfully opposed that motion before this Court.

6. We served significant discovery on Collecto. We served six sets of requests for admission on Collecto with a total of 104 individual requests, three sets of interrogatories on Collecto with a total of 21 interrogatories, and ten sets of requests for production of documents with a total 180 individual requests. In addition, prior to coordination, while representing only Mr. Lofton, I and my co-counsel served an additional 56 requests for admission, twelve interrogatories and 56 document requests on Collecto. All of this discovery generated huge quantities of information about Collecto, its dialers, and its defenses in this action.

7. When much of the initial written discovery was completed, we took three depositions of Collecto through its designated representative Peter Cappola, the Director of Telephony Services, and a deposition of Collecto through its designated representative Steven Madden, the Manager of Application Development.

8. By the end of 2014, the parties agreed to focus their efforts on resolving threshold legal issues raised by Collecto via a motion by Collecto for summary judgment. The motion concerned whether Collecto's various telephone systems were automated telephone dialing systems under the TCPA.

9. When the depositions of Collecto were complete and Collecto had produced

nearly all its dialer records, the parties exchanged expert reports, the experts were deposed, and on August 31, 2015 Collecto filed its motion for summary judgment.

10. On September 21, 2015, prior to Plaintiffs filing their opposition to the motion for summary judgment, we participated in a mediation before Mr. Antonio Piazza in San Francisco. We had planned on a two-day mediation, but though Mr. Piazza had a stellar reputation for resolving class actions including numerous TCPA actions, the mediation ended unsuccessfully after the first day.

11. The next months were spent preparing and filing an opposition to Collecto's motion for summary judgment and then attending the hearing in January 2016. With an order dated February 10, 2016, the Court denied Collecto's motion.

12. We then focused our efforts on class certification. Over the next months, we met and conferred with Collecto with respect to various discovery disputes and eventually filed five motions to compel further responses to discovery.

13. On September 20 and 21 in Boston, we again attempted mediation, this time with Rodney Max, another mediator with a very good reputation for resolving TCPA class actions. The mediation ended without a resolution in any respect, but an agreement among the participants to likely attend a third session of mediation, whether in person or by phone.

14. Over the next few months and with Mr. Max's significant assistance, the parties were able to come to an agreement in principal to resolve this action. With the framework of a resolution in place, on December 8, 2016 we notified this Court of the settlement. The remaining months were spent negotiating the details of the settlement and analyzing previously-produced data to define the contours of the class, as well as the notice and claims procedures.

15. The settlement negotiations were at all times conducted at arm's length and in good faith. The parties vigorously litigated and investigated this matter since its inception. The proposed settlement is the result of a multitude of discovery disputes, challenges to the merits, analysis of certification factors and Collecto's ability to pay a potential judgment. The parties did not negotiate or agree upon any attorney's fee and cost and only discussed a potential upper limit on class representative incentive awards after the amount of the common fund had been

agreed upon.

16. The terms of the settlement comport with similar TCPA class action settlements. Attorneys with my office have reviewed over fifty class actions filed in federal court which alleged a violation of the TCPA and which resulted in settlements. The benefits which the proposed class in this action are expected to receive compare similarly with an analysis of similar litigation. In fact, most of the settlements contemplated the class members would receive between about \$50 and \$250. Further, like this action, the majority of the settlements we reviewed included a common fund, without a reverter, and with a claims process.

17. This settlement is an objectively good result for the class. Based on the information available, we expect that, after payment of attorney's fees, litigation costs, settlement administrator costs, and the payment of class representative incentive awards, with a claims rate of about five percent, the class members will receive approximately \$40 per call placed to them. Most class members received between two and four calls. Accordingly, the estimated average payment compares favorably to the benefits achieved in similar cases and I am confident that such a settlement is in the best interest of the class.

18. In my practice, I have been appointed lead or co-lead counsel in numerous state and federal class actions. A copy of my firm's resume is attached as **Exhibit 2**. Over the past fifteen or more years of practice, well over ninety percent of my firm's work has been devoted to representing consumers in class actions. Clients generally find our firm through other attorneys who know our reputation of obtaining good results for our clients in often complex consumer class actions and having a large breadth of knowledge when it comes to the procedural intricacies of class actions. As my resume indicates, I have litigated numerous complex class actions in both trial court as well as appellate courts.

19. In addition to the cases identified on the firm resume, my office has and continues to be involved in a significant number of actions which are based on alleged violations of the Telephone Consumer Protection Act ("TCPA"). These actions are as follows: *Thomas v. Taco Bell Corp, et al.*, No. SACV09-1097 (C.D. Cal.); *Ellison v. Steven Madden, LTD*, No. CV11-05935 (C.D. Cal.); *Wannemacher v. Carrington Mortg. Services, LLC*, No. 8:12-cv-02016-FMO-

AN (C.D. Cal.); *Snyder v. Ivisionmobile, Inc.*, No. 5:13-cv-05946-HRL (N.D. Cal.); *McKenna v. Whispertext, LLC*, No. 5:14-cv-00424-PSG (N. D. Cal.); *Brown v. Directv, LLC*, No. 2:12-cv-08382-DMG-E (C.D. Cal.); *Smith v. Microsoft Corp.*, No. 11-CV-01958 (S.D. Cal.); *Fernandez v. Curacao Ltd., et al*, No CV13-03439 (C.D. CA); *Gomez v. Campbell-Ewald Co.*, No. CV-10-02007 (C.D. Cal.), *appeal docketed* No. 13-55486 (9th Cir., Mar. 22, 2013); and *Meyer v. Portfolio Recovery Assoc.*, No. 11-CV-01008 (S.D. Cal.), *transferred to MDL, In re PRA*, No. 2295 (Dec. 21, 2011).

20. As discussed above, the settlement negotiations in this matter were conducted in good faith with highly experienced mediators. Additionally, given the extensive discovery and investigation that we and our co-counsel conducted throughout the past years, we were fully informed when we entered into settlement negotiations of the strengths and weaknesses of plaintiffs' claims, as well as, Collecto's various defenses. Accordingly, we were confident that we were in the best position to negotiate a favorable resolution on behalf of the class.

21. The fact discovery, investigation, motion practice and legal research informed us, while we believed the case meritorious, it also had weaknesses which had to be carefully evaluated in determining what course (*i.e.*, whether to settle and on what terms, or to continue to litigate through class certification and a trial on the merits) was in the best interests of the class. Despite the fact that plaintiffs' allegations and claims could be supported by legal authority, expert opinion and other evidence, the specific circumstances involved here presented many uncertainties in plaintiffs' ability to prevail. Thus, after we carefully evaluated the merits of this case and considered the advantages and disadvantages of continued litigation, plaintiffs and counsel concluded that the benefits of the settlement to the class overwhelmingly weigh in favor of approval.

22. The Settlement provides class members with tangible monetary relief. The Settlement does not grant preferential treatment to plaintiffs or any other segment of the class. The method for determining each class members' compensation is objective and fair, treating all class members alike depending on whether the number of calls they received.

23. Based on my review of the webpages for Privacy Rights Clearinghouse and

discussions with its Executive Director Beth Givens, I understand Privacy Rights Clearinghouse to be a national non-profit which maintains the website www.privacyrights.org. Privacy Rights Clearinghouse has received *cy pres* funds in privacy related litigation in the past.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on July 12, 2017 at Port Hadlock, Washington.

Certification

24. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 12, 2017

/s/David C. Parisi

David C. Parisi