

**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 ETHAN PRESTON  
SUPPORTING PLAINTIFFS' FEE APPLICATION**

1. My name is Ethan Preston. I am an attorney at law licensed to practice before all of the courts of the State of California. I am counsel of record for Plaintiff John Lofton ("Lofton"), and have personal knowledge of all of the facts set forth in this declaration and could competently testify thereto if called to do so, except where noted otherwise.

**Ethan Preston's Billing Rate**

2. I have been practicing law since I graduated from the Georgetown University Law Center in 2001, and I have successfully litigated numerous complex consumer actions on behalf of plaintiffs. Since 2007, essentially all of my law practice has been devoted to litigating class actions on behalf of consumers. Prior to forming Preston Law Offices in 2009, I was a partner at KamberEdelson, LLC (now Edelson PC). Since 2009, as the principal of Preston Law Offices, I have acted independently as lead counsel or co-lead counsel in *Wang v. Asset Acceptance, LLC*, No. 09-4797 (N.D. Cal. Nov. 17, 2011), *DuFour v. Be, LLC*, No. 09-cv-03770-CRB (N.D. Cal. May 20, 2013), *Holmes v. NCO Financial Services, Inc.*, No. 10-2543 (S.D. Cal. June 23, 2014), *Wang v. Bank of America, N.A.*, No. CGC-12-526452 (Sup. Ct. San Francisco Aug. 8, 2014), *Lofton v. Verizon Wireless (VAW) LLC*, No. 13-05665 (N.D. Cal. Jan. 28, 2016), *Meyer v.*

*PYOD, LLC*, No. 37-2014-00008110-CU-BT-NC (Sup. Ct. San Diego Jan. 6, 2017), and was appointed co-lead counsel in the multi-district litigation case, *In re Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, No. 11-2295 (S.D. Cal. June 23, 2016). A true and correct copy of my firm résumé is attached as Exhibit 1 to this Declaration.

3. My billing rate of \$515 per hour is reasonable. True and correct excerpts of relevant portions of the declarations by Ethan Preston and David C. Parisi submitted to the United States District Court for the Southern District of California are attached as Exhibit 2 and 3 to this Declaration. (*In re Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, No. 11-md-02295 (S.D. Cal., Oct. 6, 2016), ECF Nos. 425-3; 425-5.) Exhibits 2 and 3 aver that the billing rates for Ethan Preston and David C. Parisi are \$515 and \$550 per hour, respectively. The court in *In re Portfolio Recovery Associates* approved a fee award to Ethan Preston and David C. Parisi under a fee application using these rates on January 17, 2017. (*See In re Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, No. 11-md-02295 (S.D. Cal., Jan. 25, 2017), ECF No. 496 (“find[ing] counsel has skillfully advanced this action on the class’s behalf on a contingent-fee basis resulting in a settlement beneficially to the class”).) A true and correct excerpt of the relevant portions of the January 17, 2017 order by that Court is attached as Exhibit 4 to this Declaration. Most recently, the Superior Court of California, County of San Diego approved these billing rates for Ethan Preston and David C. Parisi (at \$515 and \$550 per hour, respectively) on September 7, 2017. (Minute Order, *Meyer v. PYOD, LLC*, No. 37-2014-00008110-CU-BT-NC (Sup. Ct. San Diego Sept. 7, 2017),

#### **Ethan Preston’s Time Incurred in this Case**

4. **Case Investigation, Initiation, and Initial Management:** Between July 15, 2013 and February 28, 2014, I spent 156.6 hours of time on this case. Some of the tasks included in

the foregoing time include: attending a Rule 26(f) conference with opposing counsel; finalizing draft discovery; preparing a stipulated protective order and circulating with opposing counsel; preparing subpoenas for Collecto telephone bills to Global Crossing/Level 3; preparing a Rule 26(a)(1) disclosure and finalizing a Rule 26(f) plan; emailing Level 3 regarding subpoena compliance; drafting Local Rule 3-13 notice of pendency of other actions; drafting additional discovery to Defendants; reviewing other constituent cases in the MDL; researching and drafting a motion to compel Level 3 to comply with subpoena in the Central District of California; draft motion to consolidate constituent cases under 28 U.S.C. 1407 before the Judicial Panel for Multidistrict Litigation; communicating with plaintiffs' attorneys in constituent cases; emailing opposing counsel and preparing administrative motion to continue initial case management conference; emailing opposing counsel regarding discovery; finalizing initial case management statement; traveling to and attending initial case management conference in Oakland; communicating with experts regarding analysis of class discovery; prepare notice of related cases under Northern District of California local rule; reviewing Defendants' discovery responses; preparing reply brief for section 1407 motion to consolidate before the Judicial Panel for Multidistrict Litigation; preparing meet and confer letter regarding Defendants' defective discovery responses; preparing for and attending in meet and confer regarding discovery disputes; reviewing updated discovery responses; preparing third round of discovery; preparing letter regarding discovery disputes per the court's standing order; telephone conference with Magistrate Judge regarding discovery disputes; researching whether "preview dialing" violates the TCPA; communicating with opposing counsel regarding settlement negotiations and coordination before the Judicial Panel for Multidistrict Litigation; revising stipulation and order regarding briefing schedule for summary judgment; preparing a fourth round of discovery

relevant to summary judgment issues; traveling to New Orleans for oral arguments before the Judicial Panel for Multidistrict Litigation; meet and confer with Defendants regarding additional discovery responses, containing Defendants' unilateral definition of predictive dialer; reviewing document production regarding Noble dialer in preparation for motion for summary judgment; preparing a fifth round of discovery; preparing a notice of Rule 30(b)(6) deposition on the ATDS issue, other class certification issues; reviewing Judicial Panel for Multidistrict Litigation order and assessing order's impact on case management issues; finalize motion for class certification pending Rule 68 offer; researching class certification theory, facts, and case law supporting separate class consisting of wrong number class members; preparing joint prosecution agreement; and researching potential claims against Defendants' parent corporation.

5. **Discovery and Litigation Focused on Class Certification:** Between March 1, 2014 and December 31, 2014, I spent 161.6 hours of time on this case. Some of the tasks included in the foregoing time include: communicating with plaintiffs' attorneys in constituent cases; revising stipulation regarding class certification briefing; preparing and revising response to February 20, 2014 order regarding MDL leadership for plaintiffs; communicating with Defendants' regarding discovery deadlines; reviewing Defendants' responses to fifth round of discovery; preparing sixth round of discovery; researching standards for class certification in First Circuit; reviewing Defendants' discovery responses; preparing an analysis of Defendants' discovery responses; preparing a meet and confer letter regarding the same discovery responses; assisting with preparation of Rule 26(a)(1) disclosures; communicating with prospective expert witnesses regarding Defendants' class discovery production; preparing post-transfer stipulated protective order; research ascertainability in First Circuit; assisting lead counsel to prepare to meet and confer with Defendants regarding discovery disputes; participating in telephonic meet

and confer regarding discovery disputes; researching certification requirement under Rule 26(g); travelling to and from San Francisco for client deposition, assisting client with preparation for deposition; attending client deposition; coordinating on post-transfer stipulated protective order; coordinating with opposing counsel and lead counsel on compliance with post-transfer stipulated protective order; revising draft post-transfer stipulated protective order; researching adequacy requirement for class representatives; continuing to meet and confer with Defendants regarding discovery responses; researching motion to compel discovery (that was mooted by Defendants' subsequent production), assembling prospective expert witness testimony to support motion; conferencing on discovery and settlement strategy with lead counsel; researching Defendants' class discovery production; preparing seventh set of discovery; reviewing Defendants' motion to stay for primary jurisdiction; revising Rule 30(b)(6) deposition notice; preparing eighth set of discovery; researching opposition to motion to stay for primary jurisdiction; travelling to and from Los Angeles, preparing for and attending Defendants' Rule 30(b)(6) deposition; preparing meet and confer letter to Defendants regarding spoliation, missing documents, and deponent preparedness, etc.; coordinating Plaintiffs' expert witnesses' reports; researching standard for amending expert report deadlines; revising Plaintiffs' Rule 26(a)(1) disclosure; and preparing revisions to the stipulated case management order.

**6. Discovery and Litigation focused on Defeating Collecto's Motion for Summary Judgment and Initial Mediation:** Between January 1, 2015 and February 10, 2016, I spent 205.3 hours of time on this case. Some of the tasks included in the foregoing time include: continuing to coordinate expert reports regarding ATDS/summary judgment issues; reviewing Defendants' discovery responses to assess needs at summary judgment, and preparing analysis of inadequate or defect discovery responses; revising Plaintiffs' Rule 30(b)(6) deposition notice;

preparing ninth set of discovery to Defendants; researching First Circuit law on application of Hobbes Act; meeting and conferring with Defendants regarding call log productions; researching mediators proposed by Defendants; conferring with lead counsel regarding mediation strategy; preparing tenth set of discovery; coordinating with expert witnesses regarding mediation discovery; reviewing Defendants' expert report; preparing amended Rule 30(b)(6) notice of deposition regarding fields related to class member identification; coordinating with Verizon and Defendants regarding mediation; researching Defendants' objection to deposition notice; preparing amended notice of deposition; reviewing Defendants' motion for summary judgment; researching and preparing Rule 37(c)(1) motion regarding Defendants' failure to include witness in Rule 26(a)(1) disclosure; coordinating on strategy, allocation of work for preparing opposition to Collecto MSJ; researching case law rebutting Defendants' due process argument; researching and drafting portion of opposition to motion for summary judgment regarding FCC authority to promulgate orders regarding the definition of an ATDS; revising portions of opposition to motion for summary judgment; researching and drafting portion of opposition to motion for summary judgment regarding Hobbs Act precluding district court from reviewing FCC interpretation of ATDS, analyzing cases supporting view that Hobbs Act precludes review, and distinguishing cases cited by Collecto; researching and drafting portion of opposition to motion for summary judgment regarding due process/constitutionality of Hobbs Act; assisting preparation of mediation statement, reviewing Collecto's mediation brief; travelling to and from San Francisco for mediation; research potential claims against Defendants' parent corporation (including choice of law), coordinating with lead counsel; emailing Defendants' counsel regarding outstanding discovery disputes; preparing additional discovery on Defendants' financial condition; meeting and conferring with Defendants' counsel regarding Defendants'

financial documents, and compliance with the Court's order regarding class discovery; researching and drafting portion of opposition to motion for summary judgment regarding human intervention arguments; reviewing Defendants' financial documents; researching and drafting portion of opposition to motion for summary judgment regarding argument that predictive dialers are ATDSs under prevailing law; assisting finalization of opposition to motion for summary judgment, expert declaration, response to Collecto's statement of facts, and Plaintiffs' statement of facts; confer with lead counsel regarding litigation, settlement strategy after motion for summary judgment; preparing sur-reply regarding Defendants' motion for summary judgment, drafting portions on Defendants' admissions, on 47 U.S.C. § 201(b) and *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999), on origin of phrase "changes in technology" in briefing and legislative history, on application of *Chevron* deference, and requirement of actual presence of a number generator, on administrative record to show Defendants' arguments were considered with respect to FCC's 2003 order, on constitutionality of the Hobbs Act and Federal Register and administrative agency action complying with due process requirements; reviewing Court's order denying summary judgment; and conferring with Defendants' counsel regarding scheduling the remainder of the case.

7. **Discovery and Litigation focused on Class Certification and then Focus on Settlement:** Between February 11, 2016 and July 12, 2017, I spent 199.5 hours of time on this case. Some of the tasks included in the foregoing time include: conferring with lead counsel and opposing counsel regarding strategy and scheduling for the remainder of the case; preparing additional discovery for class certification; researching First Circuit law on objections to financial discovery; coordinating and preparing amended consolidated complaint; drafting motion to compel discovery (later mooted by subsequent production by Defendants); researching

grounds for good cause to amend complaint under Rule 16; preparing discovery regarding Defendants' willfulness; drafting first motion to compel class discovery (requests for admissions 58-83), including declaration and exhibits, recycling research and work performed previously; coordinating with lead counsel, opposing counsel, and expert witnesses regarding Defendants' subsequent production of class discovery; drafting second motion to compel class discovery (interrogatories 19 and 20); meeting and conferring on May 20, 2016 discovery; drafting third motion to compel class discovery (requests for production 162, 163, and 165), recycling prior work and supplementing or updating research for independent issues; drafting third motion to compel willfulness discovery (requests for production 166 to 170 and requests for admission 84 to 90); researching information related to Defendants' financial condition and Defendants' parent's financial condition; drafting motion for leave to file reply for third motion to compel; preparing additional round of class discovery to Defendants; coordinating with lead counsel regarding discovery strategy, responses to Defendants' discovery; drafting motion to compel Defendants to comply with Court's July 9, 2016 order; meeting and conferring with Defendants regarding outstanding discovery disputes; reviewing Defendants' amended response to interrogatory 20, meeting and conferring with Defendants regarding further amendments to Defendants' response to interrogatory 20; revising notice of Defendants' deposition; travel to and from Boston for second mediation, preparing for mediation, and attending second mediation in Boston; and researching propriety of settlement structure proposed by Defendants.

8. I performed much less work on as the case progressed to settlement and lead counsel took over exclusive responsibility for negotiating and preparing settlement documentation and preparing motions for the Court to approve the settlement. In 2017, I performed a total of two (2) hours on this case.

9. **Total Time Incurred:** In total, I spent 723 hours of time on this case. I performed all of the foregoing work on a contingency fee basis; I have not been paid for this work and no one has guaranteed that I will be paid for this work (aside from the settlement with Defendants).

**Ethan Preston's Expenses**

10. I have paid for various expenses that were necessary for the litigation of this case. These expenses include: (a) \$19.20 paid to a court reporter for a relevant transcript; (b) \$1,532 paid for lodging and travel-related expenses independent of the related case, *Lofton v. Verizon Wireless (VAW) LLC*, No. 13-5665 (N.D. Cal.); (c) \$2,475 paid directly to Wireless Research Services, LLC (expert witness fees related to, e.g., dialer records); (d) \$6,725 paid to Bramson Welch & Associates (computer consultant fees related to parsing and analysis of electronic records produced by Collecto); and (e) \$4,487.74 paid directly to A.B. Data, Ltd. (expert witness fees related to analyzing electronic records produced by Collecto). In addition, on September 15, 2014, I paid \$2,000 to my co-counsel for reimbursement of expert witness costs (Wireless Research Services, LLC). On July 21, 2015, I paid my co-counsel a total of \$8,333 for reimbursement of mediator costs (Mediated Resolutions/Antonio Piazza). The foregoing expenses total \$25,571.94, but I have allocated one-half of the expert/consultant fees and the mediation fees (which equals \$12,010.37) to the related case, *Lofton v. Verizon Wireless (VAW) LLC*, No. 13-5665 (N.D. Cal.). Together with the travel and other expenses, I have incurred a total of \$ 13561.57 on expenses which reasonably should be allocated to this case. I advanced all of these expenses on a contingency fee basis; I have not been reimbursed for these expenses and no one has guaranteed that I will be paid for this work.

**Certification**

11. 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: October 31, 2017

By:                   s/Ethan Preston                    
                  Ethan Preston

# Exhibit 1

(October 2017)

FIRM RÉSUMÉ

Ethan Preston has represented consumers in class actions since 2006, focusing on consumer privacy and unfair trade practices that relate to consumer technology. Mr. Preston has taken substantial leadership roles in several class actions: he was appointed lead counsel in *Lofton v. Bank of Am. Corp.*, No. 07-5892 (N.D. Cal. Nov. 5, 2008), *Wang v. Asset Acceptance, LLC*, No. 09-4797 (N.D. Cal. Nov. 17, 2011), *Holmes v. NCO Financial Services, Inc.*, No. 10-2543 (S.D. Cal. June 23, 2014), *Lofton v. Verizon Wireless (VAW) LLC*, No. 13-05665 (N.D. Cal. Jan. 28, 2016), *Wang v. Bank of America, N.A.*, No. CGC-12-526452 (Sup. Ct. San Francisco Aug. 8, 2014), *Meyer v. PYOD, LLC*, No. 37-2014-00008110-CU-BT-NC (Sup. Ct. San Diego Jan. 6, 2017), and was appointed co-lead counsel in the multi-district litigation case, *In re Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, No. 11-2295 (S.D. Cal. June 23, 2016). Prior to forming his own law firm, Mr. Preston was a partner at KamberEdelson, LLC (now Edelson PC).

Representative rulings obtained by Preston Law Offices include *Kuns v. Ocwen Loan Servicing, LLC*, No. 13-55562, 2015 WL 2405422 (9th Cir. May 21, 2015) (reversing Rule 12(b)(6) dismissal); *Holmes v. NCO Financial Services, Inc.*, No. 11-56969, 2013 WL 4376585 (9th Cir. Aug. 16, 2013) (reversing summary judgment); *Meyer v. Portfolio Recovery Associates, LLC*, 707 F.3d 1036 (9th Cir. 2012) (affirming preliminary injunction and class certification under Rule 23(b)(2)); *In re Collecto, Inc., Telephone Consumer Protection Act Litigation*, No. 14-02513, 2016 WL 552459 (D. Mass. Feb. 10, 2016) (denying motion for summary judgment on Telephone Consumer Protection Act); *Lofton v. Verizon Wireless (VAW) LLC*, 308 F.R.D. 276 (N.D. Cal. 2015) (granting motions to compel and to sanction defendants); *Wang v. Asset Acceptance LLC*, No. 09-04797, 2010 WL 2985503 (N.D. Cal. July 27, 2010) (denying motion to dismiss Fair Credit Reporting Act claim against furnisher); *DuFour v. Be., LLC*, No. 09-3770, 2009 WL 4730897 (N.D. Cal. Dec. 7, 2009) (granting constructive trust as preliminary injunction); *Lofton v. Bank of Am. Corp.*, No. 07-05892, 2008 WL 2037606 (N.D. Cal. May 12, 2008) (granting discovery motions); and *In re Netflix Antitrust Litigation*, 506 F. Supp. 2d 308 (N.D. Cal. 2007) (ruling consumers have standing to bring *Walker Process* antitrust claims, ordering limited discovery on other elements of antitrust claims).

Mr. Preston received his Bachelor of Arts degree with honors from the Plan II honors program at the University of Texas at Austin, and his *juris doctor* degree with distinction from the Georgetown University Law Center in 2001. Mr. Preston is admitted to practice in California and Texas, and is also admitted to practice before the United States District Court in, e.g., the Northern and Eastern Districts of Texas, all Districts in California, as well as the United States Courts of Appeals for the Seventh and Ninth Circuits.

Mr. Preston has also authored several law review articles: *Cross-Border Collaboration by Class Counsel in the U.S. and Ontario*, 4 Canadian Class Action Rev. 164 (2007), *The Global Rise of a Duty to Disclose Information Security Breaches*, 22 J. Marshall J. Computer & Info. L. 457 (2004) (with Paul Turner), *Computer Security Publications: Information Economics, Shifting Liability and the First Amendment*, 24 Whittier L. Rev. 71 (2002) (with John Lofton), and *The USA PATRIOT Act: New Adventures in American Extraterritoriality*, 10 J. Fin. Crime 104 (2002).

## Exhibit 2

1 James O. Lattuner  
2 EDELMAN, COMBS, LATTURNER & GOODWIN, LLC  
3 20 South Clark Street, Suite 1500  
4 Chicago, Illinois 60603  
(312) 739-4200 (telephone)  
(312) 419-0379 (facsimile)  
jlattuner@edcombs.com

5 Ethan Preston (263295)  
6 PRESTON LAW OFFICES  
7 4054 McKinney Avenue, Suite 310  
8 Dallas, Texas 75204  
(972) 564-8340 (telephone)  
(866) 509-1197 (facsimile)  
ep@eplaw.us

9 *Attorneys for Plaintiffs*

10 **IN THE UNITED STATES DISTRICT COURT FOR**  
11 **THE SOUTHERN DISTRICT OF CALIFORNIA**

12 IN RE PORTFOLIO RECOVERY  
13 ASSOCIATES, LLC, TELEPHONE  
14 CONSUMER PROTECTION ACT  
15 LITIGATION

No. 11-md-02295-JAH-BGS

Member cases:  
All member cases

Hon. John A. Houston  
Hon. Bernard G. Skomal

16 **DECLARATION OF ETHAN**  
17 **PRESTON IN SUPPORT OF**  
18 **MOTION FOR FINAL**  
19 **APPROVAL OF CLASS ACTION**  
20 **SETTLEMENT AND CLASS**  
21 **COUNSEL'S FEE APPLICATION**

Date: December 5, 2016  
Time: 2:30 p.m.  
Location: Courtroom 13B  
333 West Broadway  
San Diego, California 92101

1           1.     My name is Ethan Preston. I am an attorney licensed to practice  
2 before all the courts of the State of California. I am the sole principal of Preston  
3 Law Offices. The Court has appointed me (together with James Lattuner (at  
4 Edelman, Combs, Lattuner & Goodwin, LLC)) as co-lead counsel for the above-  
5 captioned multidistrict litigation (“MDL”) proceeding. Together with Parisi &  
6 Havens LLP, Preston Law Offices is counsel of record for Plaintiffs Jesse Meyer  
7 and Fredrick Jury in this MDL proceeding. I have personal knowledge of all the  
8 facts set forth in this declaration and could competently testify thereto if called to  
9 do so, except where noted otherwise.

#### 10 **Attorneys’ Fees**

11           2.     Prior to forming Preston Law Offices in 2009, I was a partner at  
12 KamberEdelson, LLC (now Edelson PC). Since 2009, as the principal of Preston  
13 Law Offices, I have acted independently as lead counsel or co-lead counsel in  
14 *Wang v. Asset Acceptance, LLC*, No. 09-4797 (N.D. Cal. Nov. 17, 2011), *DuFour*  
15 *v. Be, LLC*, No. 09-cv-03770-CRB (N.D. Cal. May 20, 2013), *Holmes v. NCO*  
16 *Financial Services, Inc.*, No. 10-2543 (S.D. Cal. June 23, 2014), *Lofton v. Verizon*  
17 *Wireless (VAW) LLC*, No. 13-05665 (N.D. Cal. Jan. 28, 2016), and *Wang v. Bank*  
18 *of America, N.A.*, No. CGC-12-526452 (Sup. Ct. San Francisco Aug. 8. 2014). A  
19 true and correct copy of my firm résumé is attached as Exhibit 1 to this  
20 Declaration.

21           3.     My billing rate of \$515 per hour is reasonable. I was graduated from  
22 the Georgetown University Law Center in 2001. I have been practicing since 2001  
23 and been a member of the California bar since 2009; my billing rate is consistent  
24 with the billing rate for attorneys in the Court’s local community who have  
25 practiced for 15 years. I have expended an estimated 2,004.5 hours litigating this  
26 case. At \$515 per hour, 2,004.5 hours equals \$1,032,317.5 in attorney’s fees. I  
27 performed all of this work on a contingency fee basis; I have not been paid for this  
28 work and no one has guaranteed that I will be paid for this work.

1 communications during all those parts of the case—both active litigation and  
2 settlement negotiation—where his input was needed. I would estimate that over the  
3 course of the approximate five years this case lasted, Meyer spent about twenty to  
4 forty hours working on the case. Also, Defendants sought to make Meyer’s  
5 criminal record an issue in a variety of pleadings in the case (including before the  
6 Ninth Circuit), in order to attack his adequacy as a class representative.  
7 Defendants’ public disclosure of this criminal record might have deterred a class  
8 representative who was less public-spirited or less committed to vindicating the  
9 rights of class members. Meyer’s continued prosecution of this case, despite the  
10 enhanced risks to his personal reputation, warrant an enhanced incentive award.

11 **Certification**

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

14 Dated: October 5, 2016 By: s/Ethan Preston  
15 Ethan Preston

# Exhibit 3

1 David C. Parisi (162248)  
2 Suzanne Havens Beckman (188814)  
3 PARISI & HAVENS LLP  
4 212 Marine Street, Suite 100  
5 Santa Monica, California 90405  
6 (818) 990-1299 (telephone)  
7 (818) 501-7852 (facsimile)  
8 dcparsi@parisihavens.com  
9 shavens@parisihavens.com

10 *Attorneys for Plaintiffs Jesse Meyer*  
11 *and Frederick L. Jury, on their own*  
12 *behalf, and behalf of all others similarly situated*

13 **IN THE UNITED STATES DISTRICT COURT FOR**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 IN RE: PORTFOLIO RECOVERY  
16 ASSOCIATES, LLC TELEPHONE  
17 CONSUMER PROTECTION ACT  
18 LITIGATION

No. 11-md-02295-JAH-BG

Member cases:  
All member cases

Hon. John A. Houston  
Hon. Bernard G. Skomal

**DECLARATION BY DAVID C.  
PARISI IN SUPPORT OF  
PLAINTIFFS MOTION FOR AN  
AWARD OF ATTORNEY'S FEES  
AND COSTS**

Date: December 5, 2016  
Time: 2:30 p.m.  
Location: Courtroom 13B  
333 West Broadway  
San Diego, California 92101

1 Not being paid by the hour, we had an incentive to conduct our efforts efficiently.  
 2 So too, being responsible for advancing all expenses, we had an incentive not to  
 3 expend funds unnecessarily.

4 8. My firm incurred significant time on this action prior to consolidation  
 5 in the multidistrict action. Once the action became part of the multi-district  
 6 proceedings, we performed work on the action at the request lead counsel.

## 7 **II. FEES AND EXPENSES INCURRED BY PARISI & HAVENS LLP**

8 9. The attorneys at Parisi & Havens LLP record their time  
 9 contemporaneously with the work performed. As reflected in the chart below  
 10 (segregating time by attorney), the total number of hours spent on this matter by  
 11 my firm is 848.3 and our total lodestar is \$395,975.00. The lodestar figure is based  
 12 on the ordinary professional billing rate that my law office charges clients,  
 13 including those that pay for legal services by the hour. Expenses are accounted for  
 14 and billed separately and are not duplicated in our professional billing rate. None  
 15 of this time was spent preparing this fee declaration or the attorney fee application.  
 16 This time breaks down as follows:

17 <b>Attorney</b>	<b>Years Practicing</b>	<b>Hourly Rate</b>	<b>Hours Billed</b>	<b>Total</b>
18 David C. Parisi	(1992 law school graduate)	\$550.00	505.0	\$277,750.00
19 Suzanne Havens Beckman	(1996 law school graduate)	\$525.00	128.0	\$67,200.00
20 Azita Moradmand	(2008 law school graduate)	\$250.00	199.3	\$49,825.00
21 Laura Swanson	Law Clerk	\$75.00	16.0	\$1,200.00
22 <b>Total:</b>	-	-	848.3	<b>\$395,975.00</b>

1           10. My office has incurred a total of \$6,652.58 in unreimbursed actual  
 2 third-party expenses in connection with the prosecution of this case. The actual  
 3 expenses incurred in the prosecution of this case are reflected on the computerized  
 4 accounting records of my firm. Those accounting records are prepared based on  
 5 receipts and check records and accurately reflect all actual expenses incurred.  
 6 These expenses are broken down as follows:

<b>Category</b>	<b>Amount</b>
Travel expenses	\$1,820.23
Postage and Delivery	\$547.22
Messenger and Filing Fees	\$2,876.39
Copy Services	\$120.00
Transcripts	\$84.45
Research Fees	\$289.74
Conference Call Services	\$239.55
Experts	\$675.00
<b>Total</b>	<b>\$6,652.58</b>

### 18 **III. THE RATES BILLED ARE CONSISTENT WITH ATTORNEY** 19 **RATES IN THIS DISTRICT**

20           11. The rates billed by my firm as well as my co-counsel are consistent  
 21 with the prevailing rates for attorneys of similar experience, skill and reputation in  
 22 this District.

23           12. Rates similar to the rates billed by my firm were approved by the  
 24 Southern District of California's Honorable Marilyn L. Huff several years ago.  
 25 See *In re Ferrero Litig.* 2012 U.S. Dist. LEXIS 94900, at \*11 (S.D. Cal. July 9,  
 26 2012) [*"Ferrero"*] ("The Court concludes the billing rates used by Class Counsel  
 27 to be justified by prior awards in similar litigation and the evidence presented with  
 28 their motion showing these rates are in line with prevailing rates in this District.");

1 see also *Ferrero*, Dkt. No. 114-2 at 33 of 37 (Fee Application showing requested  
2 rates).

3 13. In *Hartless v. Clorox Co.*, 273 F.R.D. 630, 644 (S.D. Cal. 2011), the  
4 Honorable Cathy Ann Bencivengo affirmed rates of “\$675 [sic] for an experienced  
5 partner’s time.” *Id.* at 644. The specific rates approved were between \$510.00 and  
6 \$664.00 for partners.<sup>1</sup> In awarding these rates, Judge Bencivengo noted that “the  
7 rates charged by the attorneys and paralegals in this action” were reasonable  
8 “based on the Court’s familiarity with the rates charged by other firms in the San  
9 Diego area[.]” *Id.*

10 14. In another Southern District of California case, the Honorable  
11 Herbert B. Hoffman (Special Master) approved a fee award based on attorney rates  
12 of \$695.00, \$595.00, and \$550.00 for partners; \$395.00 and \$245.00 for associates;  
13 and \$125.00 to \$150.00 for paralegals. See *Cohorst v. BRE Props.*, 2011 U.S. Dist.  
14 LEXIS 151719 (S.D. Cal. Nov. 9, 2011).<sup>2</sup>

15 15. Similarly, in *Iorio v. Allianz Life Ins. Co. of N. Am., Inc.*, 2011 U.S.  
16 Dist. LEXIS 21824, at \*31-32 (S.D. Cal. Mar. 3, 2011), the Honorable Janis L.  
17 Sammartino approved rates of partners in a firm who billed at between \$575.00 per  
18 hour and \$750.00 per hour.

19 **IV. THE ATTORNEY TIME BILLED IS REASONABLE**

20 16. Our firm’s practice is to keep contemporaneous records for each  
21 timekeeper and to regularly record time records in the normal course of business;  
22 and we kept time records in this case consistent with that practice. Moreover, our  
23 firm’s practice is to bill in 6-minute (tenth-of-an-hour) increments. The firm’s  
24 billing records are available to submit to the Court for in camera review upon  
25 request.

26  
27 <sup>1</sup> See *Hartless v. Clorox Co.*, No. 06-cv-2705-CAB (S.D. Cal.), Dkt. Nos. 82, 84-85, 87-88  
(declarations in support of motion for attorney’s fees).

28 <sup>2</sup> See *Cohorst*, No. 10-cv-2666-JM-BGS (S.D. Cal.), Dkt. Nos. 57-4, 57-8, and 57-9 (declarations  
in support of fee application showing hourly rates).



# Exhibit 4

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IN RE PORTFOLIO RECOVERY  
ASSOCIATES, LLC, TELEPHONE  
CONSUMER PROTECTION ACT  
LITIGATION

Case No.: 11md02295 JAH - BGS

Member cases:  
All member cases

**ORDER GRANTING IN PART  
CLASS COUNSEL’S MOTION FOR  
ATTORNEYS FEES AND  
INCENTIVE AWARDS; AND  
GRANTING IN PART BARTLETT  
AND HARVEY’S MOTION FOR  
ATTORNEYS’ FEES  
[Doc. Nos. 427, 430]**

Pending before the Court are Class Counsel’s motion for attorneys’ fees and costs and incentive payments (Doc. No. 427) and Plaintiffs Bartlett and Harvey’s motion for attorneys’ fees (Doc. No. 430). After a thorough review of the parties’ submissions and hearing oral argument, the Court GRANTS IN PART AND DENIES IN PART Class Counsel’s motion for attorney’s fees and costs, GRANTS the motion for incentive payments and GRANTS IN PART AND DENIES IN PART Plaintiff Bartlett and Harvey’s motion for attorneys’ fees.

1 **LEGAL STANDARD**

2 Class Counsel and counsel for Bartlett and Harvey Plaintiffs seek an award of  
3 attorneys’ fees and costs under Rule 23(h) of the Federal Rules of Civil Procedure. Under  
4 Rule 23(h), a court may award reasonable attorney’s fees and nontaxable costs that are  
5 authorized by law or by the parties’ agreement. In common fund cases, the district court  
6 has the discretion to award fees based upon either the percentage-of-the-fund or lodestar  
7 method. Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002). Whichever  
8 approach is used, the district court must find the award reasonable under the circumstances.  
9 Florida v. Dunne, 915 F.2d 542, 545 (9th Cir. 1990).

10 **I. National Plaintiffs**

11 **A. Attorneys’ Fees and Costs**

12 **1. Fees**

13 Class Counsel seek an award of attorneys’ fees based upon a percentage of the  
14 common fund. They seek 27% of the common fund, \$4,860,000, and maintain an award  
15 above the 25% benchmark is warranted in this action.

16 The Ninth Circuit has identified a number of factors that may be relevant in  
17 determining if the award is reasonable: (1) the results achieved; (2) the risks of litigation;  
18 (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the  
19 burdens carried by class counsel; and (6) the awards made in similar cases. See Vizcaino  
20 v. Microsoft Corp., 290 F.3d 1043, 1048–50 (9th Cir.2002). An explanation is necessary  
21 when the district court departs from the “benchmark” of 25% of recovery. Powers v.  
22 Eichen, 229 F.3d 1249, 1258 (9th Cir.2000).

23 Class Counsel contend they achieved exceptional results as demonstrated by the \$18  
24 million award and substantial injunctive relief. They also maintain the contingent nature  
25 of the case and the risk taken by counsel support the award. Specifically, they maintain  
26 Defendants had a number of colorable defenses to class certification and summary  
27 judgment and trial, including the equipment used to make the calls were not automatic  
28 telephone dialing systems, or that the calls were manually dialed, or that the defendant had

1 prior express consent to call using an automated telephone dialing system. In addition, they  
2 contend there was a real risk that the Federal Commerce Commission (“FCC”) would grant  
3 debt collection industry petitions, which might have provided a complete defense to  
4 Plaintiffs’ claims.

5 Class Counsel also maintain the skill required and the quality of their work support  
6 the fee award requested. They further contend counsels’ hourly rates are below those of  
7 other attorneys in the community performing similar work and are reasonable in light of  
8 their extensive experience.

9 Furthermore, they maintain the contingent fee and the financial burden support the  
10 fee requested. They contend all the firms involved in the litigation collectively expended  
11 over 5,500 hours, and advanced over \$73,000 in various expenses, litigating this case over  
12 nearly six years on a contingency basis. Furthermore, they argue, no plaintiff would likely  
13 pay any attorney’s hourly rate in a Telephone Consumer Protection Act (“TCPA”) case if  
14 the potential recovery were limited to the damages allowed by the TCPA. As such, they  
15 maintain, this is not the type of case that an attorney would pursue unless he or she had a  
16 reasonable expectation that a fee enhancement would be approved. Counsel further  
17 contend awards made in similar cases support the fee sought and they cite to numerous  
18 cases in this district in which attorneys’ fees of more than 25% were awarded.

19 They further argue a lodestar “cross-check” supports the requested fees. They  
20 maintain counsels’ hourly rates are reasonable and consistent with prevailing rates in the  
21 San Diego Area and the number of hours are reasonable. They further maintain the factors  
22 of Kerr v. Screen Extras Guild, Inc., 526 F.2d 67 (9th Cir. 1957), support a multiplier of  
23 1.56. Specifically, they assert the skilled and highly experienced attorneys obtained an  
24 excellent result in spite of the potential risks in getting a class certified and success on the  
25 merits, and the fees sought are consistent with the 20% - 33% awarded in other large class  
26 actions, including TCPA class actions. They further assert a multiplier is warranted due to  
27 the risk counsel took in prosecuting the case on a contingency basis, the significant delay  
28

1 in being compensated for their efforts, and the significant costs in devoting so many hours  
2 over so many years to this case.

3 They also argue Plaintiffs’ TCPA claim is an appropriate basis for an attorneys’ fee  
4 award under California Code of Civil Procedure section 1021.5. They assert section 1021.5  
5 authorizes a fee award where three elements are met: “(1) the action ‘has resulted in the  
6 enforcement of an important right affecting the public interest,’ (2) ‘a significant benefit,  
7 whether pecuniary or nonpecuniary, has been conferred on the general public or a large  
8 class of persons,’ and (3) ‘the necessity and financial burden of private enforcement are  
9 such as to make the award appropriate.’” Motion at 23 citing Serrano v. Stefan Merli  
10 Plastering Co., Inc., 52 Cal. 4th 1018 (2011). They maintain this action can be  
11 characterized as a consumer protection action that is vital to the public interest. They  
12 further maintain they satisfy the substantial benefit factor based upon the fact the Ninth  
13 Circuit recently upheld the Court’s preliminary injunction against PRA LLC. in Meyer v.  
14 Portfolio Recovery Associates, LLC, – F.3d –, 2012 WL 4840814 (9th Cir. Oct. 12, 2012),  
15 and the injunction protects a huge national class from further TCPA violations.

16 Additionally, they maintain Plaintiffs’ individual stakes for this litigation are  
17 minimal, and the costs of litigation are high.

18 Objector Archie Blair asserts the fees are excessive. This Court disagrees.

19 The Court finds counsel has skillfully advanced this action on the class’s behalf on  
20 a contingent-fee basis resulting in a settlement beneficially to the class. The Court further  
21 finds the circumstances of the action, including counsels’ experience, results achieved, the  
22 risks undertaken by counsel, and efforts in defending injunctive relief on appeal, support  
23 an upward departure from the 25% benchmark. Accordingly, Class Counsel’s motion for  
24 attorneys’ fees is granted.

25 **2. Costs**

26 Class Counsel seek an award of costs of \$73,187.13. They maintain the bulk of the  
27 expenses incurred in this litigation consists of computer and database experts and/or  
28 consultants, primarily used to analyze Defendants’ records, and travel-related expenses.

1 Arcadier's hourly rate of \$375, fees of \$53,381.25 is reasonable. Based upon Hill's hourly  
2 rate of \$400, fees of \$23,720 is reasonable. Additionally, Arcadier is awarded costs of  
3 \$1,558.87 and Hill is awarded \$224.59 for costs.

4 **CONCLUSION AND ORDER**

5 Based on the foregoing, IT IS HEREBY ORDERED:

6 1. Class Counsel's motion for attorneys' fees and costs is **GRANTED IN PART**  
7 **AND DENIED IN PART**. Class Counsel are **GRANTED** attorneys' fees of \$4,860,000  
8 and \$71,955.73 for expenses.

9 2. Class Counsel's motion for incentive payments is **GRANTED**. Each class  
10 representative is awarded \$6,250 from the common fund.

11 3. Bartlett and Harvey's motion for attorneys' fees is **GRANTED IN PART**  
12 **AND DENIED IN PART**. Counsel for Bartlett is awarded \$23,720 in attorney's fees and  
13 \$224.59 for costs. Counsel for Harvey is awarded \$53,381.25 for attorney's fees and  
14 \$1,557.87 for costs.

15 DATED: January 23, 2017

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19 JOHN A. HOUSTON  
20 United States District Judge  
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