

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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

: Master No. 1:14-md-2513-RGS
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**DECLARATION OF SERGEI LEMBERG IN SUPPORT OF MOTION FOR AN AWARD
OF ATTORNEYS' FEES AND EXPENSES**

I, Sergei Lemberg, under penalty of perjury under the laws of the United States of America, affirm and state as follows:

1. I am the principal of Lemberg Law, LLC. I am a consumer rights attorney experienced in prosecuting actions under various federal and state consumer protection statutes. I have personal knowledge as to all matters set forth in this Declaration and could testify to the same if called to do so.

2. I graduated from Brandeis University in 1997 and from the University Of Pennsylvania School Of Law in 2001. I am a member in good standing of the bars of Massachusetts, Connecticut, Georgia, New York and Pennsylvania. I am also admitted to practice before the First, Second, Third, Fourth, Fifth, Seventh, Ninth and Eleventh Circuit Courts of Appeal. I am admitted to practice before the following Federal courts: the District of Massachusetts, Eastern and Western Districts of Arkansas; the District of Connecticut; the Northern and Middle Districts of Georgia; the Northern, Central and Southern Districts of Illinois; the District of Maryland; the Eastern and Western Districts of Michigan; the Eastern District of Missouri; the District of Nebraska; the Northern, Southern, Eastern and Western Districts of New York; the Northern District of Ohio; the Northern, Eastern and Western Districts of Oklahoma; and the Western District of Texas.

3. My firm's published decisions on consumer right's matters include but are not limited to: *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98 (1st Cir. 2014); *Scott v. Westlake Servs. LLC*, 2014 WL 250251 (7th Cir. Jan. 23, 2014); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015 (9th Cir. 2012); *Butto v. Collecto, Inc*, 290 F.R.D. 372, 395-396 (E.D.N.Y. 2013); *Cerrato v. Solomon & Solomon*, 909 F.Supp.2d 139 (D. Conn. 2012); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011); *Davis v. Diversified Consultants, Inc.*, 2014 WL 2944864 (D. Mass. June 27, 2014); *Hudak v. The Berkley Grp., Inc.*, 2014 WL 354666 (D. Conn. Jan. 23, 2014); *Zimmerman v. Portfolio Recovery Assocs., LLC*, 2013 WL 6508813 (S.D.N.Y. Dec. 12, 2013); *Seekamp v. It's Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012).

4. I have been certified as class counsel, in both contested proceedings and in settlements in a number of cases. *See e.g. Ronald Munday v. Navy Federal Credit Union 8:15-cv-01629-JLS-KES* (TCPA class settlement of \$2.75MM); *In Re: Convergent Telephone Consumer Protection Act Litigation*, No. 238, 3:13-md-02478 (D. Conn., May 10, 2016) (TCPA class settlement consisting of \$5.5MM common fund and injunctive relief in a Telephone Consumer Protection Act ("TCPA") multi-district litigation); *Brown, et al. v. Rita's Water ice Franchise Company LLC*, Doc. No. 44, 15-cv-3509 (E.D. Pa., March 24, 2016) (class settlement of \$3MM common fund in TCPA action); *Duchene v. Westlake Financial*, 2:13-cv-01577-MRH (\$10MM TCPA class settlement); *Oberther v. Midland Credit Management*, Doc. No. 77, 14-cv-30014, *Zimmerman*, 276 F.R.D. 174; *Seekamp*, 2012 WL 860364 (automobile fraud class action); *Evon*, 688 F.3d 1015 (FDCPA class action); *Butto*, 290 F.R.D. 372; *Douma v. Law Offices of Mitchell N. Kay P.C.*, 09-cv-9957 (S.D.N.Y.); *Walters v. Collection Tech., Inc.*, 10-cv-02514 (S.D.N.Y.)

5. I have been interviewed and asked to contribute on multiple occasions by the media regarding various matters that I worked on, such as the Boston Herald, the New York Times, Wall

Street Journal, Newsweek, The Leader Herald, Fox News, ABC News, Chanel 7 in Boston, McClatchy, AOL Autos, Connecticut Law Tribune, Philly.com, the Los Angeles Times, Consumer Reports.org, Syracuse.com, Daily News, and Harford Advocate.

6. I have co-authored the definitive compilation of form complaints in Connecticut, Connecticut Civil Complaints for Business Litigation, contributing form complaints for the Lemon Law and Auto Fraud sections.

7. I am also the former Chair of the Consumer Law Section of the Connecticut Bar Association. I held that position from 2014 to 2015. I have been a guest speaker at the Professional Association for Customer Engagement conference in 2014 and the National Debt Collection Forum in 2016. In both instances I spoke about best practices that should be or are adopted in the debt collection profession from the perspective of a consumer advocate.

OVERVIEW OF WORK

8. We filed this case on Mr. Pegg's behalf in August 2013. At the early stages, we spent significant time researching the case, filing the initial pleadings and working on initial stages of discovery and case management.

9. In the Fall of 2013, we partnered with the firm of Morgan & Morgan in connection with representing Mr. Pegg in this case. Lemberg Law, Morgan & Morgan and Mr. Pegg entered in an agreement to share fees in this case 50-50. (Exhibit 1). Mr. Pegg was fully apprised of the arrangement and believes it was in the best interests of the class. Lemberg Law went on to work side by side with Morgan and Morgan as the case progressed.

10. Although Lemberg Law did not lead the litigation, our work included collaborating with co-counsel, reviewing and participating in the preparation of pleadings and motions filed in this case, preparation and participation in depositions in this case, preparation of discovery materials and demands, reviewing Defendant's discovery production, responding to Defendant's discovery

demands, preparation and participation in the mediation and keeping the client abreast of all developments. Additionally, I anticipate, based on past experience, that additional efforts will be necessary after the filing of the fee application related to final approval and oversight of the settlement. We may be called upon to assist class members with individual inquiries, to oversee the claims resolution process, and to help resolve Class member challenges to the result of their claims submissions.

11. This matter required lawyers at my firm to spend substantial time on this litigation that could have been spent on other matters. My firm has not been paid anything for our work on this case since it was filed.

LODESTAR

12. Our lodestar in this matter is \$94,350.00 representing 221.99 hours expended by five firm attorneys and paralegal staff. The following attorneys contributed significant time towards this case and seek compensation at the following rates.

<u>Professional</u>	<u>Rate</u>	<u>Hours</u>	<u>Lodestar</u>
Sergei Lemberg, Esq.	\$500	93.2	\$46,600
Stephen Taylor, Esq.	\$450	58.6	\$26,370
Jody Burton, Esq.	\$450	4.7	\$2,115
John V. D'Amico, Esq.	\$400	14.5	\$5,800
Jenny DeFrancisco, Esq.	\$350	2.5	\$875
Vlad Hirnyk, Esq.	\$350	20.9	\$7,315
Alex Hornat, Esq.	\$300	10.5	\$3,150
<u>Paralegal</u>	\$125	17	<u>\$2,125</u>
Total		221.9	\$94,350

13. My billing rate in this matter is \$500 per hour which is a reasonable rate given my experience and expertise in consumer rights class action litigation. This rate has recently been approved in two class action litigations. *Duchene*, Doc. No. 140, 13-cv-01577 (W.D. Pa., July 14, 2016) (approval of \$500 per hour in TCPA class action); *Munday v. Navy Federal Credit Union*,

ECF No. 60, 15-cv-01629; *Oberther*, Doc. No. 90, 14-cv-30014 (D. Ma. July 13, 2016) (approval of \$500 per hour in FDCPA class action).

14. Further, we are seeking compensation for several firm attorneys in addition to myself and Mr. Taylor. They are Stephen Taylor, Esq. (\$450.00 per hour), Jody Burton, Esq. (\$450 per hour), John V. D'Amico, Esq. (\$400 per hour), Jenny DeFrancisco, Esq., (\$300 per hour), Vlad Hirnyk, Esq., (\$300 per hour), and Alex Hornat, Esq., (\$250 per hour). The hourly rates are fully justified by the skill and experience of these lawyers.

15. Mr. Taylor is a Senior Associate who manages our class action department. Mr. Taylor is a 2007 graduate of Tulane University School of Law and a 2003 graduate from Boston College. He is licensed to practice law in the states of Connecticut and New York, and the federal district courts for the Southern, Eastern, Western and Northern Districts of New York, the Southern, Eastern, and Northern Districts of Texas, the District of Colorado, the Central District of Illinois and the District of Connecticut. Mr. Taylor has extensive experience in consumer rights litigation including matters brought under the TCPA, the FDCPA and the Magnuson Moss Federal Act, the Truth in Lending Act, and a variety of state consumer protection statutes. Further, he has served as class counsel in the following: *Seekamp v. It's Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011). Mr. Taylor's rate of \$450 has recently been approved in two class action litigations. *Duchene*, Doc. No. 140, 13-cv-01577 (W.D. Pa., July 14, 2016) (approval of \$450 per hour in TCPA class action); *Oberther*, Doc. No. 90, 14-cv-30014 (D. Ma. July 13, 2016) (approval of \$450 per hour in FDCPA class action).

16. Ms. Burton is a senior associate at Lemberg Law, is and has been lead counsel in numerous consumer protection actions in other Districts. Ms. Burton received her J.D. from American University, Washington College of Law in 1993 and is admitted to practice law in

Connecticut, New York, Pennsylvania, and Washington, D.C. In addition, Ms. Burton is admitted to practice before the following Federal Courts: the Northern, Southern and Eastern Districts of Texas, the Middle, Eastern and Western Districts of Pennsylvania, the District of Connecticut, and the District Court for the District of Columbia.

17. Mr. D'Amico is a former associate of my firm. Mr. D'Amico received his B.A. from Duke University in 1988 and his J.D. from Fordham University School of Law in 1998. He is admitted to practice in New York and New Jersey, and in the U.S. District Courts for the Southern and Eastern Districts of New York and for the District of New Jersey. Mr. D'Amico is an experienced litigator with a practice focusing on securities fraud, commodities manipulation and consumer fraud.

18. Ms. DeFrancisco is an associate with the firm. She received her J.D. from Brooklyn Law School in 2010 and is admitted to practice in Connecticut and New York. Ms. DeFrancisco is also admitted to practice before the Northern, Southern and Eastern Districts of Texas, the District of Connecticut, the District of Nebraska, the District of North Dakota, the Northern, Southern and Western Districts of New York, and the District of Colorado. Ms. DeFrancisco's practice focuses on FDCPA and TCPA litigation.

19. Mr. Hirnyk is an associate with the firm. Mr. Hirnyk received his J.D. from the Pace University School of Law in 2009 and is admitted to practice in New York and Connecticut. Mr. Hirnyk is also admitted to practice before the following federal courts: the Northern and Central Districts of Illinois; the Eastern and Western Districts of Michigan; the Northern, Southern, Eastern and Western Districts of New York; and the District of Colorado. Mr. Hirnyk's practice formerly focused on FDCPA and TCPA litigation, and now exclusively focuses on Lemon Law, Breach of Warranty and Auto Fraud matters, and he has represented hundreds of plaintiffs.

20. Mr. Hornat is a former associate of my firm. Mr. Hornat received his J.D. from the University of Connecticut School of Law in 2013 and is admitted to practice in Connecticut, New York and Massachusetts. Mr. Hornat is also admitted to practice before the District of Connecticut, Southern District of New York, District of Massachusetts. Mr. Hornat's practice focused on FDCPA and TCPA litigation.

21. In my professional opinion, the billing rates charged (between \$500 and \$250 for attorneys and \$125 for paralegal staff) are within the range of rates charged by attorneys with similar qualifications in class action litigation. Associate rates were approved by Judge Mark G. Mastroianni just last year in *Oberther v. Midland Credit Management*, 14-cv-30014 (D. Mass.); *See also Munday v. Navy Federal Credit Union*, ECF No. 60, 15-cv-01629 (C.D. Cal., July 14, 2017) (approving fee application setting forth rates as follows: \$500 for Sergei Lemberg, \$450 for Stephen Taylor, \$250 for Alex Hornat and \$125 per hour for paralegal time); *see also* (Entry # 113-1 at ¶ 13 requesting rates; Entry #140 at ¶ 18 approving fee request; Entry #142 at Tr.47:16-19 (rates charged by counsel (which are in line with the same rates charged here) were “not by any measure off the charts.”)).

22. The hourly rates sought are also in line with fee awards in other cases in this District. For instance, in *Davis v. Footbridge Eng'g Servs., LLC*, the Honorable Judge Nancy Gertner (Ret.) set reasonable hourly rates for plaintiff's counsel in a Fair Labor Standards Act action. No. 09-cv-11133-NG, 2011 WL 3678928 (D. Mass. Aug. 22, 2011). Class counsel came from mid-sized firms with national practice and experience in litigating a variety of national class actions. *Id.*, 2011 WL 3678928, at *3-4. The Court approved rates for partners of \$565 to \$650 per hour, for associates at rates of \$350 to \$425 per hour and for paralegal staff at \$140 to \$210 per hour. *Id.* Moreover, the court in *Davis* noted that while plaintiff's counsel were not from large firms, “that fact is not dispositive,” explaining that “[w]hile higher rates at the large firms may be justified by their higher

overhead, the overhead and transaction costs of a class action litigation practice, particularly a national practice, is similarly high.” *Id.* at *4. See also *Gross v. Sun Life Assur. Co. of Canada*, 105 F. Supp. 3d 130, 135 (D. Mass. 2015) (awarding individual plaintiff’s Boston-based attorney \$500 per hour in ERISA action); *Carpaneda v. Domino’s Pizza, Inc.*, 89 F. Supp. 3d 219, 229 (D. Mass. 2015) (Young, J.) (awarding plaintiff’s counsel \$425 and \$275 per hour in action alleging violations of the Massachusetts Minimum Wage Law and the Massachusetts Tips Law); *Awuah v. Coverall N. Am., Inc.*, 791 F. Supp. 2d 284, 290 (D. Mass. 2011) (Young, J.) (awarding attorneys hourly fees ranging from \$400 to \$200 per hour in employment action); *Meagher v. Andover Sch. Comm.*, No. CV 13-11307-JGD, 2016 WL 70447, at *6 (D. Mass. Jan. 6, 2016) (awarding senior partner hourly rate of \$450 per hour in unlawful termination action); *Kelley v. Com. Dep’t of Conservation & Recreation*, No. SUCV200701910, 2014 WL 2504520, at *1 (Mass. Super. Mar. 21, 2014) (awarding plaintiff’s counsel \$425 per hour in employment law action); *Ciolino v. Eastman*, No. CV 13-13300-ADB, 2016 WL 6246757, at *4 (D. Mass. Oct. 25, 2016) (awarding plaintiffs’ counsel hourly rates ranging between \$400 and \$190 in civil rights case).

EXPENSES

23. Lemberg Law has incurred substantial costs due to court costs, travel and deposition expenses in connection with this action.

24. As reflected in the expense report attached hereto as Exhibit 2, the total costs incurred to date are \$5,516.22.

25. All of these costs and expenses are reflected in the books and records of the firm, and are supported by invoices, receipts, expense vouchers, check records, or other documentation. In the event that the Court would like further detail or documentation concerning these expenses, we would be happy to provide it.

26. In my professional opinion, and based on my experience prosecuting the action and overseeing the conduct of the litigation, all of these expenses were reasonable and necessarily incurred in connection with the action.

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

Dated: October 30, 2017

/s/ Sergei Lemberg, Esq.
Sergei Lemberg, Esq.

EXHIBIT 1



AGREEMENT AS TO DIVISION OF ATTORNEYS' FEES

The law firms of Morgan & Morgan Complex Litigation Group and Lemberg & Associates LLC ("Attorneys") have been retained to provide legal representation to Client with regard to a class action seeking damages and/or other relief against EOS CCA, along with any of its subsidiaries and/or affiliates, if appropriate, for its violation of the Telephone Consumer Protection Act.

A. The law firms of Morgan & Morgan Complex Litigation Group and Lemberg & Associates LLC agree that in connection with any attorneys' fees awarded, and paid and collected as a result of the successful resolution of the litigation filed on behalf of Client against EOS CCA that the law firms will divide attorneys' fees between them equally, such that Morgan & Morgan Complex Litigation Group will be paid and receive 50% of the attorneys' fees awarded and paid, and Lemberg & Associates, LLC shall be paid and will receive 50% of the attorneys' fees awarded and paid, after deducting the costs and expenses advanced by Attorneys in connection with the litigation.

B. Morgan & Morgan Complex Litigation Group and Lemberg & Associates LLC agree that Morgan & Morgan Complex Litigation Group will advance 50% of the costs and expenses of the suit and Lemberg & Associates LLC will advance 50% of the costs and expenses of the suit.

APPROVED BY:

10-7-2013
Date

10-4-2013
Date

Jama G for
J. Andrew Meyer for Morgan & Morgan Complex Litigation Group

Sergei Lemberg
Sergei Lemberg for Lemberg & Associates LLC

Client agrees to and consents to this Agreement of Division of Attorneys' Fees between Morgan & Morgan Complex Litigation Group and Lemberg & Associates, LLC.

10/27/13
Date

Robert K Pegg
Client (Signature)

Robert K Pegg
Client (Print)

EXHIBIT 2

LEMBERG LAW LLC

Find Report

All Transactions

7:45 PM

10/29/2017

Accrual Basis

Type	Date	Num	Memo	Account	Clr	Debit	Credit	Balance
Check	09/25/2015	1051	Travel expense	1600 · Advanced Client Costs		266.48		266.48
Credit Card Charge	09/15/2015		Travel expense	1600 · Advanced Client Costs		298.10		564.58
Credit Card Charge	09/15/2015		Travel expense	1600 · Advanced Client Costs		408.10		972.68
Credit Card Charge	08/26/2015		Travel expense	1600 · Advanced Client Costs		549.80		1,522.48
Check	01/18/2015	10214	Expert fee	1600 · Advanced Client Costs		2,000.00		3,522.48
Credit Card Credit	10/03/2014		Travel expense	1600 · Advanced Client Costs	√		6.15	3,516.33
Credit Card Charge	09/29/2014		Travel expense	1600 · Advanced Client Costs		2.50		3,518.83
Credit Card Charge	09/28/2014		Travel expense	1600 · Advanced Client Costs		10.86		3,529.69
Credit Card Charge	09/28/2014		Travel expense	1600 · Advanced Client Costs		13.04		3,542.73
Credit Card Charge	09/28/2014		Travel expense	1600 · Advanced Client Costs		205.03		3,747.76
Credit Card Charge	09/27/2014		Travel expense	1600 · Advanced Client Costs		36.00		3,783.76
Credit Card Charge	02/23/2014		Travel expense	1600 · Advanced Client Costs		256.00		4,039.76
Credit Card Charge	02/23/2014		Travel expense	1600 · Advanced Client Costs		150.00		4,189.76
Credit Card Charge	02/05/2014		Travel expense	1600 · Advanced Client Costs		7.00		4,196.76
Credit Card Charge	02/01/2014		Travel expense	1600 · Advanced Client Costs		475.00		4,671.76
Credit Card Charge	01/28/2014		Travel expense	1600 · Advanced Client Costs		225.00		4,896.76
Credit Card Charge	01/27/2014		Travel expense	1600 · Advanced Client Costs		14.00		4,910.76
Credit Card Charge	01/27/2014		Travel expense	1600 · Advanced Client Costs		5.36		4,916.12
Credit Card Charge	11/08/2013		Court filing fee	1600 · Advanced Client Costs		100.00		5,016.12
Credit Card Charge	11/08/2013		Court filing fee	1600 · Advanced Client Costs		100.00		5,116.12
Credit Card Charge	08/13/2013		Court filing fee	1600 · Advanced Client Costs		400.00		5,516.12
Total						5,522.27	6.15	5,516.12