

# **EXHIBIT 2**

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12

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 WESTERN DIVISION

16

16 JEFFREY A. THOMAS,  
17 individually and on behalf of all  
others similarly situated,

18 Plaintiff,

19 v.

20 DUN & BRADSTREET  
21 CREDIBILITY CORP.,

22 Defendant.

Case No. CV15-03194 BRO (GJSx)

**DECLARATION OF AARON SIRI IN  
SUPPORT OF PLAINTIFF’S MOTION  
FOR ATTORNEYS’ FEES AND COSTS  
AND CLASS REPRESENTATIVE  
SERVICE AWARD**

Judge: Hon. Beverly Reid O’Connell

23

24 I, Aaron Siri, declare as follows:

25 1. I am a partner in of the law firm of Siri & Glimstad LLP (“SG”),  
26 counsel of record for Plaintiff in this matter. I have been one of the lawyers  
27 primarily responsible for the prosecution of Plaintiff’s claims on behalf of the  
28 proposed Class. I am admitted *pro hac vice* to practice before this Court and am a

1 member in good standing of the bar of the State of New York; the United States  
2 District Court for the Eastern, Southern, and Northern Districts of New York; and  
3 the U.S. Court of Federal Claims. I respectfully submit this declaration in support  
4 of Plaintiff's motion for attorneys' fees and costs and a class representative service  
5 award. I make these statements based on personal knowledge and would so testify  
6 if called as a witness at trial.

7 **I. Background and Experience**

8 2. I have significant experience in wide range of complex civil litigation  
9 matters. I received a Bachelor of Science in Accounting with Honors from Yeshiva  
10 University in 2001. I received a Juris Doctorate degree from the Boalt Hall School  
11 of Law at the University of California at Berkeley (now called "Berkeley Law") in  
12 2004 where I earned multiple Prosser Prizes and was the editor-in-chief of the  
13 Berkeley Business Law Journal. During law school I was also selected as a Frank  
14 C. Newman delegate, based on a paper I authored regarding regulating transnational  
15 corporations, and presented before the United Nations Human Rights Sub-  
16 Committee regarding a draft resolution of the Transnational Corporations Working  
17 Group.

18 3. After law school, I clerked for the Chief Justice of the Supreme Court  
19 of Israel, the Honorable Aharon Barak, from 2004 to 2005, where I advised the  
20 Chief Justice of relevant American, English (including Commonwealth Countries  
21 such as Canada, Australia, and New Zealand) and International Law precedents for  
22 cases of first impression, including in the areas of entity taxation, fiduciary duties,  
23 adoption, wills, bankruptcy and corporate liability, as well as the international law  
24 implications of Israel's planned removal, by force or otherwise, of approximately  
25 8,500 of its citizens from the Gaza Strip/West Bank.

26 4. Following my clerkship, I was an attorney at Latham & Watkins LLP  
27 ("Latham") in their New York office from 2005 until 2010. I was a member of the  
28 litigation department and worked on numerous significant high profile and complex

1 litigation matters. Representative matters include: *Golden Gate Yacht Club v.*  
2 *Societe Nautique De Geneve*, 18 Misc. 3d 1111(A), 856 N.Y.S.2d 24 (N.Y. Sup. Ct.  
3 2007) *order reinstated* 12 N.Y.3d 248 (2009) (successfully disqualifying a Spanish  
4 yacht club as the challenger and qualifying an American yacht club as the  
5 challenger for the America’s Cup as well as numerous successful subsequent  
6 contempt motions); *Caesars Bahamas Inv. Corp. v. Baha Mar Joint Venture*  
7 *Holdings Ltd.*, 75 A.D.3d 419, 420 (1st Dep’t 2010) (successfully upholding  
8 Caesars Bahamas right to withdraw from a project that was in the process of  
9 developing the largest casino resort in the Caribbean); *Amboy Bus Co. v. Klein et al.*,  
10 Index No. 105004/2010 (N.Y. Sup. Ct.) (an Article 78 petition related to revising the  
11 system by which approximately one billion dollars is allocated among the N.Y.C.  
12 Dep’t of Education’s school busing contractors which resulted in an expedited  
13 settlement for the client); representing the leaseholder of the retail portions of the  
14 World Trade Center in an arbitration related to insurance coverage arising out of the  
15 destruction of the World Trade Center on September 11, 2001; and successfully  
16 responding to SEC inquiries related to an investigation of a major investment bank. I  
17 was also an active member of the firm’s various pro-bono programs, including  
18 representation of asylum applicants, housing discrimination victims (including *Dunlap*  
19 *et al. v. Jacobs et al.*, 1:06-cv-06160-CM (S.D.N.Y.)), and non-profit organizations in  
20 tenant-landlord disputes. Latham earned a spot in the top 25 firms that have fared  
21 the best in *The American Lawyer's* biennial “Litigation Department of the Year”  
22 contest, including placing in its “Litigation Power Rankings.” Latham has also been  
23 honored in this competition five times, including receiving Honorable Mention in  
24 2010 and 2008 and being named Finalist in 2006.

25         5.         Subsequent to Latham, I have worked at Siri & Glimstad LLP  
26 (formerly known as the Law Office of Aaron Siri) (“SG”). Representative matters  
27 handled while at SG include: successfully obtaining dismissal of an action claiming  
28 purported ownership of three large parcels in Astoria, Queens, recently sold for

1 approximately \$50 million, upon which there is a commenced \$1.5 billion  
2 redevelopment project (*Compurun, Inc. d/b/a Rainbow Prime Products v. Famitech*  
3 *Inc. et al.*, Index No. 708713/2014 (Queens Sup. Ct.)); appointed co-class counsel  
4 in a case involved ERISA claims relating to an ESOP which resulted in a settlement  
5 of \$11,138,938 (*Gatto v. Sentry Services, Inc.*, et al, No. 13 CIV 05721  
6 (S.D.N.Y.)); representing victims in six separate adversarial proceeding seeking  
7 non-dischargeability of various debts arising from various complicated financial  
8 transactions and which resulted in judgments totaling over \$5 million (Adv. Pro.  
9 Nos. 13-08321; 13-08323; 13-08324; 13-08219; 13-08218; and 13-08220 (Bankr.  
10 S.D.N.Y.)); trial court and appellate practice regarding an action seeking \$16 million  
11 based on purported breaches of contract and fiduciary duty related to the  
12 construction of a steel plant in the Republic of Kazakhstan (*Garthon Business Inc.*  
13 *et al. v. Stein et al.*, Index No. 653715/2014 (N.Y. Sup. Ct.)); obtained a temporary  
14 restraining orders prohibiting the further movement of approximately 35,000  
15 pounds of cashews which quickly resulted in a favorable settlements (*Ultra Trading*  
16 *International Ltd. v. Intimex Group Joint Stock Company*, No. 651672/2014 (N.Y.  
17 Sup. Ct.); *Ultra Trading International Ltd. v. Phuong Duy Co. Ltd*, No.  
18 655777/2016 (N.Y. Sup. Ct.)); an action against the seller, shipper, logistics  
19 company and freight forwarder regarding the conversion of over 3,000 high-end  
20 watches which resulted in a favorable settlement (*Delta Sales Group Co., Inc. v.*  
21 *Cargo Logistics Network Co. et al.*, No. 1:12-cv-03751-RJS (S.D.N.Y.)); an action  
22 alleging the breach of a distribution agreement against one of the world's largest  
23 food manufacturers that resulted in a confidential settlement agreement (*Adamba*  
24 *Imports International, Inc. v. Kraft Foods, Inc.*, No. 1:12-cv-00729-SJ-VVP  
25 (E.D.N.Y.)); an action to recover millions of dollars converted by a broker-dealer  
26 involving a complex series of transactions (*Bak et al. v. Sledziejowski et al.*, No.  
27 022232/2012 (Kings Sup. Ct.)); defending against an action claiming purported  
28 majority ownership in an entity which purchased two condominium projects in

1 Florida for over \$16 million, which included a precedent setting interlocutory  
2 appeal to the Third District Court of Appeal which clarified the standard in Florida  
3 for maintaining a *lis pendens* (*LED Trust, LLC et al. v. Schwartz et al.*, Case No.  
4 2011-35999-CA-01 (Miami-Dade County Cir. Ct.)); counsel for former major  
5 kosher poultry manufacturer against the nation’s largest kosher poultry  
6 manufacturer that resulted in a confidential settlement (*MVP Kosher Foods LLC v.*  
7 *Empire Kosher Poultry, Inc.*, 14-CV-6072 (E.D.N.Y.)); co-counsel for plaintiffs in  
8 ERISA matters filed as a class actions involving breaches of fiduciary duty related  
9 to the management and termination of an ESOP (*Kindle v. Dejana*, No. 14-cv-  
10 06784 (E.D.N.Y.); *Hoover v. Besler et al.*, 14-cv-05786-JAP-DEA (D.N.J.)); and  
11 actions seeking to enforce various guarantees and related contractual provisions  
12 which resulted in favorable settlements (*MVP Holdings I LLC v. Wieder et al.*, No.  
13 602479/2013 (Nassau Sup. Ct.); *MVP Holdings I LLC v. Globex Kosher Foods,*  
14 *Inc.*, No. 600022/2013 (Nassau Sup. Ct.)).

15 **II. Overview of Class Action Litigation Against Defendant under the TCPA.**

16 6. This litigation has been particularly difficult and contentious. Since  
17 2014, SG, along with co-counsel Lieff, Cabraser, Heimann & Bernstein, LLP  
18 (“LCHB”), has engaged in a comprehensive litigation strategy to pursue class  
19 action UCL and TCPA claims against Dun & Bradstreet Credibility Corp. These  
20 efforts have been focused in two actions: (1) *Vadai v. Dun & Bradstreet Credibility*  
21 *Corp.*, No. 14 Civ. 1617 (LLS) (S.D.N.Y.), and (2) *Thomas v. Dun & Bradstreet*  
22 *Credibility Corp.*, Case No. 2:15-cv-03194-BRO-GJS (C.D. Cal.). The class action  
23 TCPA claims pursued in *Vadai* ultimately settled in this action. I firmly believe  
24 that the efforts in *Vadai* on behalf of the same class members contributed  
25 meaningfully to the Settlement here.  
26  
27  
28

1 **The Vadai Action**

2 7. SG researched Defendant’s practices and Eyal Vadai’s legal claims  
3 prior to initiating that suit, by, among other things, reviewing publicly available  
4 records regarding Defendant, including other actions commenced against Defendant  
5 related to its telemarketing practices, and researching relevant TCPA case law and  
6 regulations, as well as potential state law claims. This information was critical to  
7 SG’s understanding of the nature of the problem, the scope of potential damages  
8 and remedies, and the potential risks and benefits of commencing litigation.

9 8. Plaintiff Vadai – like Plaintiff Thomas here – alleged that Defendant  
10 illegally called him and thousands of proposed class members on their cellular  
11 telephones via an “automatic telephone dialing system” and/or by using “an  
12 artificial or prerecorded voice” without their “prior express consent” within the  
13 meaning of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et*  
14 *seq.* Plaintiff Vadai proposed a nationwide class of:

15 All persons within the United States who, from March 10, 2010  
16 through the present, received a non-emergency telemarketing call from  
17 or on behalf of D&B to a cellular telephone through the use of an  
18 automatic telephone dialing system.

19 9. SG prepared and on March 10, 2014 filed a class action complaint and  
20 accompanying commencement papers against Defendant for violations of the  
21 TCPA. Dkt. Nos. 1-2.

22 10. Following filing of the complaint, and on the heels of a number of  
23 extended communications and conversations between counsel, the parties engaged  
24 in letter motion practice on March 31, 2014 and April 1, 2014 with regard to  
25 Defendant’s motion for an extension and Plaintiff’s motion to direct Defendant to  
26 engage in a 26(f) conference. Dkt. Nos. 5, 7.

1           11. On April 1, 2014, Defendant filed a motion to dismiss claiming the  
2 compliant failed to adequately plead Defendant's use of an ATDS and further  
3 claiming that Defendant was not properly served. Dkt. Nos. 8-9.

4           12. SG spent significant resources researching and drafting an opposition  
5 to Defendant's motion to dismiss including with regard to Defendant's claim as to  
6 the definition of an ATDS, Defendant's claim that deciding whether a phone system  
7 is an ATDS is a question of law, Defendant's claim that the standard in *Twombly*  
8 and *Iqbal* was not met for pleading the use of an ATDS, and Defendant's claim that  
9 service was ineffective.

10           13. In light of Defendant's motion to dismiss, SG also researched,  
11 prepared and filed on April 2, 2014 a motion seeking expedited discovery to require  
12 that Defendant disclose the manual for the phone system which made the call  
13 alleged in the complaint as well as records and recordings in Defendant's  
14 possession regarding this call. Dkt. No. 10.

15           14. Defendant filed a letter motion opposing the request for expedited  
16 discovery on April 7, 2014. Dkt. No. 11. The Court granted the request for  
17 expedited discovery and required Defendant to produce the manual for its phone  
18 system, which Defendant then produced on April 10, 2014. Dkt. No. 12. On the  
19 heels of this production, Defendant requested and it was agreed that the motion to  
20 dismiss would be withdrawn, an amended complaint would be filed to add  
21 additional allegations regarding the ATDS from the phone manual produced, and  
22 that Defendant would only file an answer to the amended complaint and would not  
23 file any further motion to dismiss. Dkt. No. 13.

24           15. SG carefully reviewed Defendant's extensive and technical phone  
25 manual spanning 360 pages and based on same researched, drafted, and filed an  
26 amended complaint on April 23, 2014. Dkt. No. 14.

27           16. Defendant filed an answer on May 7, 2014 containing twenty-three  
28 separate defenses. Dkt. No. 18. SG extensively researched each of these defenses



1 but ultimately concluded against filing a motion to strike Defendant's affirmative  
2 defenses.

3 17. On May 8, 2014, SG prepared and served a first set of requests for  
4 production and set of interrogatories. On May 16, 2014, based on additional  
5 developments and information SG served a second set of requests for production,  
6 and on May 22, 2014 the parties exchanged initial disclosures, and based on same  
7 and other developments and information SG prepared and served a third set of  
8 requests for production on May 23, 2014. SG held a number of meet and confers  
9 with regard to these discovery requests with Defendant's counsel as well as with  
10 regard to the case management plan. On June 23, 2014, SG also prepared and  
11 served a FOIA request upon the FCC with regard to any complaint regarding  
12 Defendant's calling practices as well as the calling practices of On-Line  
13 Communications, Inc. dba OLC Global, Inc. and follow-up communications with  
14 the FCC regarding these requests.

15 18. On June 13, 2014, SG prepared and had served a subpoena on On-Line  
16 Communications, Inc. dba OLC Global, Inc. with regard to calls made by them on  
17 behalf of Defendant. On June 25, 2014, OLC Global produced 96 pages which SG  
18 reviewed and conducted additional research regarding their specific phone system  
19 including communications with an expert regarding this phone system. SG also  
20 negotiated extensively with OLC Global's counsel regarding their production  
21 which culminated in an additional production from OLC and a detailed declaration  
22 from OLC Global's CEO, dated July 16, 2014, regarding their calling practices on  
23 behalf of Defendant generally and specifically as to the call made to Plaintiff Vadai.

24 19. On June 11, 2014, Defendant filed a letter motion seeking a stay of the  
25 action pursuant to the primary jurisdiction doctrine because Defendant asserted that  
26 the FCC was poised to clarify what constitutes an ATDS, whether a party can  
27 recover under the TCPA for a call made to a business, and who is the proper  
28

1 plaintiff under the TCPA – the intended recipient, the subscriber, or the individual  
2 who answered. Dkt. No. 22.

3 20. SG researched, drafted, and filed, on June 17, 2014, a motion opposing  
4 Defendant’s motion to stay under the primary jurisdiction doctrine including  
5 addressing all of the sub-issues raised in that motion. Dkt. No. 27. A hearing  
6 before the Court on Defendant’s motion for a stay was held on June 20, 2014 in  
7 which the Court denied Defendant’s motion for a stay. Dkt. No. 29.

8 21. Simultaneous with the foregoing motion practice related to  
9 Defendant’s motion to stay the action, SG prepared and filed, on June 11, 2014, a  
10 motion to compel production of documents for outstanding discovery requests. Dkt.  
11 No. 24. Defendant filed an opposition to this motion and at the Court’s hearing on  
12 June 20, 2014, certain of SG’s discovery requests were voided as overbroad and the  
13 Court otherwise ordered that Defendant produce documents related to its phone  
14 system’s calling capacity on or before July 15, 2014. Dkt. Nos. 26, 29.

15 22. After the foregoing, LCHB joined as co-counsel in the Vadai action  
16 and Class Counsel then prepared a Second Amended Complaint based on additional  
17 information learned during discovery and filed a letter motion seeking leave to file  
18 the Second Amended Complaint on July 23, 2014. Dk. No. 31. SG also reviewed a  
19 motion for class certification prepared and filed by LCHB on July 23, 2014. Dkt.  
20 No. 32.

21 23. On July 25, 2014, while that motion was pending, Defendant filed a  
22 letter brief requesting that the court find Plaintiff Vadai’s claims moot because of  
23 an unaccepted offer of judgment that Defendant made to Plaintiff Vadai pursuant to  
24 Rule 68 of the Federal Rules of Civil Procedure. Dkt. No. 33.

25 24. Later that day, the court ruled from the bench during a status  
26 conference, finding Plaintiff Vadai’s claims moot due to the unaccepted offer of  
27 judgment. *See* Dkt. No. 34.

28

1           25. The court entered judgment in favor of Defendant on September 3,  
2 2014.

3 **The Thomas Action**

4           26. Jeffrey Thomas also retained LCHB and SG to pursue UCL and TCPA  
5 claims against Defendant.

6           27. Plaintiff Thomas filed this action on April 28, 2015. Dkt. No. 1.

7           28. Plaintiff Thomas alleged – like Plaintiff Vadai – that Defendant illegally  
8 called him and thousands of proposed class members on their cellular telephones  
9 via an “automatic telephone dialing system” and/or by using “an artificial or  
10 prerecorded voice” without their “prior express consent” within the meaning of  
11 TCPA. Accordingly, Plaintiff Thomas proposed a nationwide class of:

12           All persons within the United States who received a non-emergency  
13 telemarketing call from or on behalf of DBCC to a cellular telephone  
14 through the use of an automatic telephone dialing system.

15           29. The parties engaged in significant motion practice regarding their  
16 respective pleadings.

17           30. On June 12, 2015, Defendant filed a motion to dismiss the Complaint.  
18 Dkt. No. 16. Plaintiff filed an opposition and provided supplemental authority to  
19 the Court. Dkt. Nos. 17, 18.

20           31. Following full briefing by the parties, the Court denied that motion on  
21 August 5, 2015. *Thomas v. Dun & Bradstreet Credibility Corp.*, 100 F. Supp. 3d  
22 937 (C.D. Cal. 2015) (Dkt. No. 23).

23           32. Defendant filed an Answer on August 20, 2015, vigorously contesting  
24 Plaintiff’s TCPA claims and asserting 26 affirmative defenses. Dkt. No. 26.

25           33. Over the next two months, the parties met and conferred extensively  
26 regarding Plaintiff’s proposed motion pursuant to Rule 12(f) to strike certain of  
27 Defendant’s affirmative defenses.  
28

1 34. Following that process, Defendant filed an amended answer that  
2 withdrew seven affirmative defenses. Dkt. No. 38.

3 **The Classwide Discovery**

4 35. The parties have engaged in significant discovery regarding Plaintiff's  
5 allegations.

6 36. Plaintiff served discovery requests on July 27, 2015.

7 37. The parties negotiated a stipulated protective order, which the Court  
8 approved. *See* Dkt. No. 31.

9 38. Over a four-month period, the parties met and conferred regularly  
10 regarding Plaintiff's discovery requests.

11 39. Those efforts culminated in motion to compel and joint stipulation  
12 pursuant to Local Rule 37-2.3 regarding several categories of contested discovery  
13 requests. However, shortly before filing the motion, the parties came to a  
14 compromise agreement that resulted in the production of several key categories of  
15 discovery.

16 40. Defendant produced call data to Plaintiff's expert so that he could  
17 determine the total number of cellular telephone numbers dialed by Defendant.

18 41. On a rolling basis across several months, Defendant produced a total  
19 of 8,812 pages of documents and responded to eight interrogatories propounded by  
20 Plaintiff.

21 42. Plaintiff served a nonparty subpoena to call vendor OLC, Inc., and  
22 obtained 982 responsive documents.

23 43. Plaintiff's counsel examined this information and prepared to file for  
24 class certification on June 6, 2016.

25 44. Plaintiff scheduled and fully prepared for Rule 30(b)(6) depositions of  
26 Defendant's witnesses in May 2016.

27 **Discovery of Plaintiff Thomas**

28 45. Defendant engaged in extensive discovery of Plaintiff Thomas.

1 46. Defendant served document requests and interrogatories.

2 47. In December 2015, Defendant deposed Plaintiff Thomas.

3 48. Defendant served third-party discovery requests on Plaintiff Thomas'  
4 business, wife, and cell phone provider.

5 49. Defendant also deposed Plaintiff's wife in her individual capacity and  
6 as a representative for Plaintiff's business.

7 **Mediation**

8 50. Beginning only a few weeks before the deadline for Plaintiff to file his  
9 class certification motion, the parties began a series of discussions regarding the  
10 possibility of mediation.

11 51. During these sessions, the parties discussed their relative views of the  
12 law and the facts and, in particular, their respective views on whether the proposed  
13 class could be certified.

14 52. Two days before the depositions notice by Plaintiff Thomas were to  
15 proceed, the parties postponed them to pursue mediation. As such, Plaintiff's  
16 counsel had already prepared to file a class certification brief at the time the parties  
17 decided to mediate. Based on their preparation for class certification, Plaintiff's  
18 counsel fully expected that class certification in this case would be hotly contested.

19 53. The parties participated in an all-day mediation before the Honorable  
20 Morton Denlow (Ret.) of JAMS in Chicago, Illinois. Prior to the mediation, the  
21 parties submitted detailed mediation briefs to Judge Denlow, setting forth their  
22 respective views on the strengths of their cases. The parties discussed their relative  
23 views of the law and the facts and potential relief for the proposed Class.

24 54. At all times, the settlement negotiations were highly adversarial, non-  
25 collusive, and at arm's length. The settlement negotiations were also prolonged and  
26 hard-fought, spanning many months; the parties exchanged a series of  
27 counterproposals on key aspects of the Settlement, including monetary relief for the  
28 Class, notice to the Class and the meaning and interpretation of the eligibility

1 requirements. The negotiation process nearly broke down several times as Class  
2 Counsel continually advocated for a larger fund for the Class, while Defendant  
3 wanted a smaller fund. The case settled only after Plaintiff and Defendant accepted  
4 a mediator's proposal.

5 55. Class Counsel did not begin negotiations on an agreed-upon fee  
6 amount with Defendant until *after* the parties reached agreement on the material  
7 terms of the relief for the Class.

8 56. Thereafter, the parties spent several months negotiating the final  
9 settlement terms and drafting the Settlement Agreement.

#### 10 **Confirmatory Discovery**

11 57. Defendant's call records confirm that approximately 1,192,555 persons  
12 in the Class received calls.

13 58. Pursuant to the Settlement Agreement, Defendant voluntarily agreed to  
14 produce additional confirmatory discovery relevant to the Settlement, including  
15 additional discovery confirming the size of the settlement class. Such discovery  
16 further confirmed that the terms of the Settlement are fair, reasonable, and  
17 adequate.

#### 18 **The Settlement Agreement**

19 59. As more fully described in Plaintiffs' Motion for Preliminary  
20 Approval, the Settlement Agreement provides for compensation to the class in the  
21 form of a \$10,500,000 non-reversionary common fund and prospective practice  
22 changes designed to prevent the dialing of cell phones using an automatic telephone  
23 dialing system.

24 60. The prospective practice changes provide a substantial benefit to the  
25 class. Based upon Class Counsel's frequent interactions with recipients of  
26 unwanted autodialed calls to cellular phones, the most common request made by  
27 these individuals is that the unwanted calls stop.

28

1 **III. SG's Time and Expenses Litigating this Case**

2 **Contingent Nature of Action**

3 61. Because SG is a small firm, we cannot take on a large number of  
4 cases. Doing this work has required SG to spend time on this litigation that could  
5 have been spent on other matters. At various times during the litigation of this class  
6 action, this lawsuit has consumed my time, along with the time of supporting staff  
7 at SG who do not bill their time.

8 62. Such time could otherwise have been spent on other fee-generating  
9 work. Because SG undertook representation of this matter on a contingency-fee  
10 basis, SG shouldered the risk of expending substantial costs and time in litigating  
11 the action without any monetary gain in the event of an adverse judgment.

12 63. In deciding to pursue this action, I accepted that contentious class  
13 discovery would likely be required, with not only the named defendant, but also  
14 then-unknown third-party vendors that made calls on behalf of the Defendant. I  
15 personally shouldered the risk of non-recovery for a significant portion of this  
16 matter before LCHB joined me as co-counsel. When SG loses cases, my firm takes  
17 in no money whatsoever, regardless of how hard I worked and regardless of how  
18 much money I spent on depositions, experts, and other out-of-pocket costs.

19 64. Litigation is inherently unpredictable and therefore risky. Here, that  
20 risk was very real: SG has had to withdraw and/or dismiss a number of TCPA class  
21 actions without any recovery for the proposed class or any or only limited fees for  
22 its work on behalf of the proposed class. *See, e.g., Conroy v. ADT*, 1:14-cv-1252-  
23 RA (S.D.N.Y. May 6, 2014) (dismissing claim based on disclosures by defendant);  
24 *Calleja v. Bright House Network*, 5:15-cv-966-LEK-DEP (N.D.N.Y. 2016)  
25 (dismissing case after transfer to Middle District of Florida and disclosure of  
26 arbitration clause); *Wachstock v. Verde Energy USA*, 1:14-cv-04082 (E.D.N.Y.  
27 2014) (dismissing case after significant discovery when named plaintiff acceded to  
28 individual offer to settle from defendant).

1           65. I believed that each of these cases would be successful when I filed  
2 them, but I was ultimately incorrect. As with other lawyers, sometimes I think I  
3 should have won cases or motions that I eventually lost. The difference is that  
4 while many lawyers receive payment regardless of whether they win or lose, I do  
5 not receive any compensation for contingency-fee cases I lose. These are not the  
6 only cases I have lost, but they illustrate the risks associated with this kind of small-  
7 firm contingency practice.

8           66. Therefore, despite my firm's devotion to this case and my confidence  
9 in the UCL and TCPA claims alleged against Defendant, there have been many  
10 factors beyond our control that posed significant risks.

11           67. Several pending Supreme Court decisions decided in the last term  
12 could have eviscerated Plaintiff's claims, including *Spokeo v. Robins*, 136 S. Ct.  
13 1540 (2016) (considering, but ultimately rejecting, the argument that violations of a  
14 federal privacy statute do not give rise to a private cause of action), *Campbell-*  
15 *Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016) (considering, but ultimately rejecting,  
16 the argument that an unaccepted Rule 68 offer of judgment could moot a named  
17 plaintiff's claim and prevent her from pursuing a class action), and *Tyson Foods,*  
18 *Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016) (considering, but ultimately not  
19 deciding, whether and when a plaintiff must show that each class member suffered  
20 the alleged injury).

21           68. A number of petitions pending before the FCC have placed the TCPA  
22 legal landscape in a state of flux and could have ended this case. *See, e.g., In the*  
23 *Matter of Rules and Regulations Implementing the Telephone Consumer Protection*  
24 *Act of 1991*, 30 F.C.C.R. 7961, 30 FCC Rcd. 7961, 62 Communications Reg. (P&F)  
25 1539, 2015 WL 4387780 (F.C.C.), *pet. for rev. pending, ACA Int'l v. FCC*, No. 15-  
26 1211 (D.C. Cir.).

27           69. In addition, I was specifically aware of the risk posed by this Court's  
28 decision in *Simon v. Healthways, Inc.*, Case No. 14-cv-08022-BRO, 2015 WL



1 10015953 (C.D. Cal. Dec. 17, 2015), which found that the issue of prior express  
2 consent was an individualized issue that precluded class certification.

3 70. If not devoted to litigating this action, from which any remuneration to  
4 SG is wholly contingent on a successful outcome, the time I and staff spent  
5 working on this case could and would have been spent pursuing other potentially  
6 fee generating matters.

7 **SG's Lodestar**

8 71. SG has spent considerable outlays of time and money by, among other  
9 things, (1) investigating these actions; (2) conducting legal research and briefing for  
10 numerous motions as outlined *supra*; (3) conducting extensive discovery as  
11 outlined *supra*; and (4) negotiating the Settlement, administering the Settlement,  
12 and responding to Class Member inquiries.

13 72. SG has maintained contemporaneous time records since the  
14 commencement of this action. Through the date of this declaration, I have worked  
15 a total of 449.6 hours in this action, with a total lodestar of \$303,480. The  
16 foregoing does not include non-attorney staff time spent on this matter.

17 73. All attorneys at SG are instructed to maintain contemporaneous time  
18 records reflecting the time spent on this and other matters. The regular practice at  
19 SG is for all attorneys to keep contemporaneous time records, maintained on a daily  
20 basis, and describing tasks performed in 0.1 hour increments. Firm policy requires  
21 all attorneys to enter their time into an electronic timekeeping system on a daily  
22 basis. I review and audit the time on a regular basis.

23 74. SG's lodestar will grow as we continue to finalize the settlement  
24 process and close the litigation. The claims period will last for two more months,  
25 and SG's commitment of time and labor to this case will continue until (and likely  
26 beyond) that date. SG will continue to assist Class members with individual  
27 inquiries, will oversee the claims resolution process, and Class Counsel will help  
28 resolve Class member challenges to the result of their claims submissions. Judging

1 by previous experiences, these responsibilities will require dozens, if not hundreds,  
2 of hours of work by Class Counsel over the coming months.

3 **SG's Costs**

4 75. SG maintains all books and records regarding costs expended on each  
5 case in the ordinary course of business, which books and records are prepared from  
6 expense vouchers and records. I have reviewed the records of costs expended in  
7 this matter.

8 76. SG has incurred \$3,317.04 in expenses, which includes SG's payments  
9 for (1) court filing fees, (2) travel to court hearings and mediation; and (3) hard  
10 costs such Federal Express.

11 **SG Billing Rate**

12 77. I set my billing rate based on a variety of factors, including among  
13 others: the experience, skill and sophistication required for the types of legal  
14 services typically performed and the rates customarily charged in similar matters.  
15 My current billing rate of \$675 is commensurate with the rate that I was billing over  
16 five years ago as an attorney at Latham, the billing rate I currently charge for  
17 similar matters, as well as the rate for attorneys with my level of experience in New  
18 York, New York.

19 **Careful Assignment and Review of Work, and Deletion of Duplicative Work**

20 78. Tasks were delegated appropriately among partners, associate  
21 attorneys, paralegals, and other staff according to their complexity. The work  
22 performed by associate attorneys and paralegals was work that required sufficient  
23 knowledge of legal concepts and that I would have had to perform absent such  
24 assistance. I and other Class Counsel therefore made every effort to litigate this  
25 efficiently by reducing duplication of effort and assigning work to the lowest billing  
26 timekeepers where feasible.

27 79. We reduced or eliminated time reported where necessary to ensure that  
28 SG is not seeking reimbursement for unnecessary duplication of efforts. I can

