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13 *Co-Lead Counsel for Plaintiffs*

14 **UNITED STATES DISTRICT COURT**  
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 **IN RE: MIDLAND CREDIT**  
17 **MANAGEMENT, INC.,**  
18 **TELEPHONE CONSUMER**  
19 **PROTECTION ACT LITIGATION**

20 Case No. 11-md-2286-MMA (MDD)  
21 Member cases: 10-cv-02261  
22 10-cv-02600  
23 10-cv-02368  
24 10-cv-02370

25 **CLASS ACTION**  
26 **DECLARATION OF JAMES O.**  
27 **LATTURNER IN SUPPORT OF**  
28 **UNOPPOSED MOTION FOR**  
**ATTORNEYS' FEES AND COSTS,**  
**AND FOR INCENTIVE PAYMENTS**  
**TO PLAINTIFFS**

Date: August 26, 2016  
Time: 9:00 a.m.  
Courtroom: 3A  
Judge Michael M. Anello

1 I, James O. Lattuner, declare under penalty of perjury, as provided for by 28  
2 U.S.C. § 1746, that the following statements are true:

3 1. I am one of the attorneys for Plaintiffs Christopher Robinson, (“Robinson”),  
4 Eduardo Tovar (“Tovar”), and Dave Scardina (“Scardina”) (“Plaintiffs” or “Class  
5 Representatives”) in this action. I submit this declaration in support of Plaintiffs’  
6 Motion for Attorneys’ Fees and Costs.

7 2. The declaration is based upon my personal knowledge, except where  
8 expressly noted otherwise.

9 3. I am a member of Edelman, Combs, Lattuner & Goodwin, LLC (“ECLG”)  
10 and a member in good standing of the bar of the State of Illinois. In the Order  
11 granting Preliminary Approval to the Settlement, the Court appointed my firm and  
12 me as Co-Lead Counsel for the Class. (ECF 291 at ¶ 6.)

### 13 **Class Counsel’s Experience**

14 4. In its twenty-five year history, ECLG has litigated hundreds of class  
15 actions in state and federal courts around the country. ECLG, currently consisting  
16 of nine principles and three associates, has represented consumers in actions  
17 involving collection practices and debtor’s rights, credit reporting, mortgage  
18 servicing abuses, predatory lending, automobile sales and financing abuses, and has  
19 litigated numerous cases under the Fair Debt Collection Practices Act, the  
20 Telephone Consumer Protection Act, the Truth in Lending Act, the Real Estate  
21 Settlement Procedures Act, and the Fair Credit Reporting Act, as well as state  
22 unfair and deceptive practice statutes.

23 5. I am a 1962 graduate of the University of Chicago Law School. Until 1969, I  
24 was an associate and then a partner at the Chicago law firm of Berchem, Schwanes  
25 & Thuma. From 1969 to 1995, I was Deputy Director of what is now the Legal  
26 Assistance Foundation of Metropolitan Chicago, where I specialized in consumer  
27 law. I have worked at ECLG since 1995. Over the course of my career, I have  
28 argued over 30 appeals, including two cases before the United States Supreme  
Court, three before the Illinois Supreme Court, and numerous cases in the Third,

1 Fifth, Seventh, and Eleventh Circuits. I have taught in eighteen Federal Practice  
2 courses sponsored by the Legal Services Corporation, each lasting four days and  
3 designed for attorneys nationwide with federal litigation experience. My  
4 publications include Chapter 8 ("Defendants") in *Federal Practice Manual for*  
5 *Legal Services Attorneys* (M. Masinter, Ed., National Legal Aid and Defender  
6 Association 1989); *Governmental Tort Immunity in Illinois*, 55 Ill.B.J. 29 (1966);  
7 *Illinois Should Explicitly Adopt the Per Se Rule for Consumer Fraud Act*  
8 *Violations*, 2 Loy.Consumer L.Rep. 64 (1990), and *Illinois Consumer Law*  
9 (Chicago Bar Ass'n 1996). I am a member of the Northern District of Illinois Trial  
10 Bar. I have settled numerous cases through private mediation primarily with JAMS  
11 Chicago, and Judicate West, through mediations with judges and magistrate judges,  
12 and with mediators connected to the Seventh Circuit Court of Appeals Settlement  
13 Office.

#### 14 **Experience With Telephone Consumer Protection Act Litigation**

15 6. ECLG has brought a number of cases under the Telephone Consumer  
16 Protection Act, 47 U.S.C. §227 *et seq.* ("TCPA"). In addition to this case, my firm  
17 and I have been appointed lead counsel in two other TCPA-related multi-district  
18 litigations: *In re Portfolio Recovery Associates, LLC Telephone Consumer*  
19 *Protection Act Litigation* (S.D. Cal.) (pending) and *In re Enhanced Recovery*  
20 *Company, LLC, Telephone Consumer Protection Act Litigation*, (M.D. Fla.)  
(dismissed pursuant to settlement).

21 7. ECLG has also brought a number of cases complaining of robocalling and  
22 telemarketing abuse, in violation of the TCPA, including: *Soppet v. Enhanced*  
23 *Recovery Co.*, 679 F.3d 637 (7<sup>th</sup> Cir. 2012); *Balbarin v. North Star Capital*  
24 *Acquisition, LLC*, 10 C 1846, 2011 WL 211013 (N.D. Ill. Jan. 21, 2011), *motion to*  
25 *reconsider denied*, 2011 U.S. Dist. LEXIS 58761 (N.D. Ill. 2011); *Sojka v.*  
26 *DirectBuy, Inc.*, 12 C 9809 et al., 2014 WL 1089072 (N.D. Ill., Mar. 18, 2014),  
27 later opinion, 2014 WL 1304234 (N.D. Ill., March 31, 2014).

28 8. ECLG has also brought a number of junk fax and spam text message cases

1 under the TCPA. Decisions include: *Brill v. Countrywide Home Loans, Inc.*, 427  
2 F.3d 446 (7<sup>th</sup> Cir. 2005); *Sadowski v. Med1 Online, LLC*, 07 C 2973, 2008 WL  
3 2224892 (N.D. Ill., May 27, 2008); *Benedia v. Super Fair Cellular, Inc.*, 07 C  
4 01390, 2007 WL 2903175, (N.D. Ill., Sept. 26, 2007); *Centerline Equip. Corp. v.*  
5 *Banner Pers. Serv.*, 545 F. Supp. 2d 768 (N.D. Ill. 2008); *ABC Business Forms,*  
6 *Inc. v. Pridamor, Inc.*, 09 C 3222, 2009 WL 4679477 (N.D. Ill. Dec. 1, 2009); *Glen*  
7 *Ellyn Pharmacy, Inc. v. Promius Pharma, LLC*, 09 C 2116, 2009 WL 2973046  
8 (N.D. Ill. Sept. 11, 2009); *Garrett v. Ragle Dental Laboratory, Inc.*, 10 C 1315,  
9 2010 WL 3034709 (N.D. Ill., Aug. 3, 3010).

### 10 **Other Consumer And Class Action Litigation Experience**

11 9. Since its inception, ECLG has recovered more than \$500 million for  
12 consumers. The following cases illustrate the types of cases the firm has handled  
13 since I joined it in 1995:

14 **A. Collection Practices and Debtor's Rights:** ECLG has brought  
15 numerous cases under the Fair Debt Collection Practices Act, both class and  
16 individual. Decisions include: *Jenkins v. Heintz*, 25 F.3d 536 (7<sup>th</sup> Cir. 1994), aff'd  
17 514 U.S. 291 (1995) (FDCPA coverage of attorneys); *Charles v. Lundgren &*  
18 *Assocs., P.C.*, 119 F.3d 739 (9<sup>th</sup> Cir. 1997); *Suesz v. Med-1 Solutions, LLC*, 757  
19 F.3d 636 (7<sup>th</sup> Cir. 2014) (en banc); *McMahon v. LVNV Funding, LLC*, 744 F.3d  
20 1010 (7<sup>th</sup> Cir. 2014), later opinion, 807 F.3d 872 (7<sup>th</sup> Cir. 2015) (collection of time-  
21 barred debts); *Siwulec v. J.M. Adjustment Servs., LLC*, 465 Fed. Appx. 200 (3<sup>d</sup> Cir.  
22 2012); (activities of mortgage company field agents); *Fields v. Wilber Law Firm,*  
23 *P.C.*, 383 F.3d 562 (7<sup>th</sup> Cir. 2004); *Schlosser v. Fairbanks Capital Corp.*, 323 F.3d  
24 534 (7<sup>th</sup> Cir. 2003) (FDCPA coverage of debt buyers); *Peter v. GC Servs. L.P.*, 310  
25 F.3d 344 (5<sup>th</sup> Cir. 2002); *Nielsen v. Dickerson*, 307 F.3d 623 (7<sup>th</sup> Cir. 2002)  
26 (attorney letters without attorney involvement); *Boyd v. Wexler*, 275 F.3d 642 (7<sup>th</sup>  
27 Cir. 2001); *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*,  
28 214 F.3d 872 (7<sup>th</sup> Cir. 2000); *Johnson v. Revenue Management, Inc.*, 169 F.3d 1057  
(7<sup>th</sup> Cir.1999); *Keele v. Wexler & Wexler*, 95 C 3483, 1995 WL 549048, 1995 U.S.

1 Dist. LEXIS 13215 (N.D. Ill. Sept. 12, 1995) (motion to dismiss), later opinion,  
2 1996 WL 124452 (N.D. Ill., March 18, 1996) (class), aff'd, 149 F.3d 589 (7th Cir.  
3 1998); *Mace v. Van Ru Credit Corp.*, 109 F.3d 338 (7th Cir. 1997); *Maguire v.*  
4 *Citicorp Retail Services, Inc.*, 147 F.3d 232 (2nd Cir. 1998); *Young v. Citicorp*  
5 *Retail Services, Inc.*, No. 97-9397, 1998 U.S. App. LEXIS 20268, 159 F.3d 1349  
6 (2nd Cir., June 29, 1998) (unpublished); *Avila v. Rubin*, 84 F.3d 222 (7th Cir.  
7 1996), aff'g *Avila v. Van Ru Credit Corp.*, 94 C 3234, 1994 WL 649101 (N.D. Ill.,  
8 Nov. 14, 1994), later opinion, 1995 WL 22866 (N.D. Ill., Jan. 18, 1995), later  
9 opinion, 1995 WL 41425 (N.D. Ill., Jan. 31, 1995), later opinion, 1995 WL 55255  
10 (N.D. Ill., Feb. 8, 1995), later opinion, 1995 WL 683775 (N.D. Ill., Nov. 16, 1995);  
11 *Tolentino v. Friedman*, 833 F. Supp. 697 (N.D. Ill. 1993), aff'd in part and rev'd in  
12 part, 46 F.3d 645 (7th Cir. 1995); *Diaz v. Residential Credit Solutions, Inc.*, 965 F.  
13 Supp.2d 249 (E.D.N.Y. 2013), later opinion, 297 F.R.D. 42 (E.D.N.Y. 2014), later  
14 opinion, 299 F.R.D. 16 (E.D.N.Y. 2014); *Stubbs v. Cavalry SPV I*, 12 C 7235, 2013  
15 WL 1858587 (N.D. Ill., May 1, 2013); *Osborn v. J.R.S.-I, Inc.*, 13 C 621, 2013 WL  
16 2467654 (N.D. Ill., June 7, 2013); *Terech v. First Resolution Mgmt. Corp.*, 854 F.  
17 Supp.2d 537, 544 (N.D. Ill. 2012); *Casso v. LVNV Funding, LLC*, 12 C 7328, 2013  
18 WL 3270654 (N.D. Ill., June 26, 2013); *Simkus v. Cavalry Portfolio Services, LLC*,  
19 11 C 7425, 2012 WL 1866542 (N.D. Ill., May 22, 2012); *McDonald v. Asset*  
20 *Acceptance LLC*, 296 F.R.D. 513 (E.D. Mich. 2013); *Ramirez v. Apex Financial*  
21 *Management, LLC*, 567 F. Supp.2d 1035 (N.D. Ill. 2008); *Cotton v. Asset*  
22 *Acceptance, LLC*, 07 C 5005, 2008 WL 2561103 (N.D. Ill., June 26, 2008); *Buford*  
23 *v. Palisades Collection, LLC*, 552 F. Supp. 2d 800 (N.D. Ill. 2008); *Martin v.*  
24 *Cavalry Portfolio Servs., LLC*, 07 C 4745, 2008 WL 4372717 (N.D. Ill., March 28,  
25 2008); *Hernandez v. Midland Credit Mgmt.*, 04 C 7844, 2007 WL 287405 (N.D.  
26 Ill., Sept. 25, 2007) (balance transfer program); *Blakemore v. Pekay*, 895 F. Supp.  
27 972 (N.D. Ill. 1995); *Laws v. Cheslock*, 98 C 6403, 1999 WL 160236, 1999 U.S.  
28 Dist. LEXIS 3416 (N.D. Ill., Mar. 8, 1999); *Davis v. Commercial Check Control,*  
*Inc.*, 98 C 631, 1999 WL 89556, 1999 U.S. Dist. LEXIS 1682 (N.D. Ill., Feb. 12,

1 1999); *Vaughn v. CSC Credit Services, Inc.*, 93 C 4151, 1994 WL 449247 (N.D.  
2 Ill., March 1, 1994), adopted, 1995 WL 51402 (N.D. Ill., Feb. 3, 1995); *Gordon v.*  
3 *Fink*, 93 C 4152, 1995 WL 55242, 1995 U.S. Dist. LEXIS 1509 (N.D. Ill., Feb. 7,  
4 1995); *Brujis v. Shaw*, 876 F. Supp. 198 (N.D. Ill. 1995); *Ramirez v. Palisades*  
5 *Collection LLC*, 250 F.R.D. 366 (N.D. Ill. 2008) (class certified), later opinion, 07  
6 C 3840, 2008 WL 2512679 (N.D. Ill., June 23, 2008) (summary judgment denied);  
7 (Illinois statute of limitations for credit card debts); *Parkis v. Arrow Fin Servs.*, 07  
8 C 410, 2008 WL 94798 (N.D. Ill. Jan. 8, 2008); *Rawson v. Credigy Receivables,*  
9 *Inc.*, 05 C 6032, 2006 WL 418665 (N.D. Ill., Feb. 16, 2006) (same); *Jones v.*  
10 *Kunin*, 99-818-GPM, 2000 WL 34402017 (S.D. Ill., May 1, 2000) (scope of Illinois  
11 bad check statute); *Qualkenbush v. Harris Trust & Sav. Bank*, 219 F. Supp. 2d 935  
12 (N.D. Ill. 2002) (failure to allow cosigner to take over obligation prior to collection  
13 action).

14 **B. Mortgage Charges and Servicing Practices:** ECLG has been  
15 involved in dozens of cases, mostly class actions, complaining of illegal charges on  
16 mortgages and improper servicing practices. These include MDL-899, *In re*  
17 *Mortgage Escrow Deposit Litigation*, and MDL-1604, *In re Ocwen Federal Bank*  
18 *FSB Mortgage Servicing Litigation*, as well as the Fairbanks mortgage servicing  
19 litigation. *Leff infra* was the seminal case on mortgage escrow overcharges. The  
20 escrow litigation had a substantial effect on industry practices, resulting in  
21 limitations on the amounts which mortgage companies held in escrow. The  
22 recoveries in the escrow overcharge cases alone were over \$250 million. Decisions  
23 include: *Hamm v. Ameriquest Mortg. Co.*, 506 F.3d 525 (7<sup>th</sup> Cir. 2007); *Handy v.*  
24 *Anchor Mortgage Corp.*, 464 F.3d 760 (7<sup>th</sup> Cir. 2006); *Christakos v. Intercounty*  
25 *Title Co.*, 196 F.R.D. 496 (N.D. Ill. 2000); *Flippin v. Aurora Bank, FSB*, 12 C  
26 1996, 2012 WL 3260449 (N.D. Ill. Aug. 8, 2012); *Kesten v. Ocwen Loan Servicing,*  
27 *LLC*, 11 C 6981, 2012 WL 426933 (N.D. Ill. Feb. 9, 2012); *Johnstone v. Bank of*  
28 *America, N.A.*, 173 F. Supp.2d 809 (N.D. Ill. 2001); *Leon v. Washington Mut.*  
*Bank, F.A.*, 164 F. Supp.2d 1034 (N.D. Ill. 2001); *Williamson v. Advanta Mortg.*

1 Corp., 99 C 4784, 1999 WL 1144940 (N.D. Ill. Oct. 5, 1999); *McDonald v.*  
2 *Washington Mut. Bank, F.A.*, 99 C 6884, 2000 WL 875416 (N.D. Ill. June 22,  
3 2000); 1995 WL 242287 (N.D. Ill. April 24, 1995);; *Greenberg v. Republic Federal*  
4 *S. & L. Ass'n*, 94 C 3789, 1995 WL 263457 (N.D. Ill., May 1, 1995).

5 **C. Predatory Lending Practices:** ECLG has brought numerous cases  
6 challenging predatory mortgage and "payday" lending practices, both as individual  
7 and class actions. *Jackson et al v. Payday Financial LLC et al*, 764 F.3d 765 (7th  
8 Cir. 2014), *cert. denied*, 135 S. Ct. 1894 (2015); *Livingston v. Fast Cash USA, Inc.*,  
9 753 N.E.2d 572 (Ind. Sup. Ct. 2001); *Williams v. Chartwell Fin. Servs.*, 204 F.3d  
10 748 (7th Cir. 2000); *Hamm v. Ameriquest Mortg. Co.*, 506 F.3d 525 (7<sup>th</sup> Cir. 2007);  
11 *Handy v. Anchor Mortg. Corp.*, 464 F.3d 760 (7<sup>th</sup> Cir. 2006); *Laseter v.*  
12 *Climateguard Design & Installation LLC*, 931 F. Supp.2d 862 (N.D. Ill. 2013);  
13 *Hubbard v. Ameriquest Mortg. Co.*, 624 F. Supp.2d 913 (N.D. Ill. 2008); *Martinez*  
14 *v. Freedom Mortg. Team, Inc.*, 527 F. Supp. 2d 827 (N.D. Ill. 2007); *Pena v.*  
15 *Freedom Mortg. Team, Inc.*, 07 C 552, 2007 WL 3223394 (N.D. Ill. October 24,  
16 2007); *Miranda v. Universal Fin. Group, Inc.*, 459 F. Supp. 2d 760 (N.D. Ill. 2006);  
17 *Parker v. 1-800 Bar None, a Financial Corp., Inc.*, 01 C 4488, 2002 WL 215530  
18 (N.D. Ill., Feb. 12, 2002); *Gilkey v. Central Clearing Co.*, 202 F.R.D. 515 (E.D.  
19 Mich. 2001); *Van Jackson v. Check 'N Go of Illinois, Inc.*, 193 F.R.D. 544 (N.D.  
20 Ill. 2000), later opinion, 114 F. Supp. 2d 731 (N.D. Ill. 2000), later opinion, 123 F.  
21 Supp. 2d 1079 (N.D. Ill. 2000), later opinion, 123 F. Supp. 2d 1085 (N.D. Ill.  
22 2000); *Henry v. Cash Today, Inc.*, 199 F.R.D. 566 (S.D. Tex. 2000); *Donnelly v.*  
23 *Illini Cash Advance, Inc.*, 00 C 94, 2000 WL 1161076 (N.D. Ill., Aug. 14, 2000);  
24 *Jones v. Kunin*, 99-818-GPM, 2000 WL 34402017 (S.D. Ill., May 1, 2000); *Davis*  
25 *v. Cash for Payday*, 193 F.R.D. 518 (N.D. Ill. 2000); *Reese v. Hammer Fin. Corp.*,  
26 99 C 716, 1999 U.S. Dist. LEXIS 18812, 1999 WL 1101677 (N.D. Ill., Nov. 29,  
27 1999); *Pinkett v. Moolah Loan Co.*, 99 C 2700, 1999 WL 1080596, (N.D. Ill. Nov.  
28 1, 1999); *Gutierrez v. Devon Fin. Servs.*, 99 C 2647, 1999 U.S. Dist. LEXIS 18696

1 (N.D. Ill., Oct. 6, 1999); *Vance v. National Benefit Ass'n*, 99 C 2627, 1999 WL  
2 731764 (N.D. Ill., Aug. 26, 1999).

3 **D. Automobile Sales and Financing practices:** The firm has brought  
4 many cases challenging practices relating to automobile sales and financing. Some  
5 of these had a substantial effect on industry practices. The warranty cases, such as  
6 *Grimaldi*, *Gibson*, *Slawson*, *Cirone-Shadow*, *Chandler*, and *Shields*, *infra*, resulted  
7 in the Federal Reserve Board's revision of applicable disclosure requirements, so as  
8 to prevent car dealers from representing that the charge for an extended warranty  
9 was being disbursed to a third party when that was not in fact the case. Decisions  
10 include:

11 (1) Hidden finance charges resulting from pass-on of discounts on  
12 auto purchases. *Walker v. Wallace Auto Sales, Inc.*, 155 F.3d 927 (7th Cir. 1998).

13 (2) Misrepresentation of amounts disbursed for extended warranties.  
14 *Taylor v. Quality Hyundai, Inc.*, 150 F.3d 689 (7th Cir. 1998); *Grimaldi v. Webb*,  
15 668 N.E.2d 39 (Ill. App. Ct. 1996), leave to appeal denied, 169 Ill.2d 566 (1996);  
16 *Slawson v. Currie Motors Lincoln Mercury, Inc.*, 94 C 2177, 1995 WL 22716 (N.D.  
17 Ill., Jan. 13, 1995); *Cirone-Shadow v. Union Nissan, Inc.*, 955 F. Supp. 938 (N.D.  
18 Ill. 1997) (same); *Chandler v. Southwest Jeep-Eagle, Inc.*, 162 F.R.D. 302 (N.D. Ill.  
1995); *Shields v. Lefta, Inc.*, 888 F. Supp. 891 (N.D. Ill. 1995).

19 (3) Spot delivery. *Janikowski v. Lynch Ford, Inc.*, 98 C 8111, 1999  
20 WL 608714 (N.D. Ill., Aug. 5, 1999); *Grimaldi v. Webb*, 668 N.E.2d 39 (Ill. App.  
21 Ct. 1996), leave to appeal denied, 169 Ill.2d 566 (1996).

22 (3) Force placed insurance. *Travis v. Boulevard Bank*, 93 C 6847,  
23 1994 U.S. Dist. LEXIS 14615 (N.D. Ill., Oct. 13, 1994), modified, 880 F. Supp.  
24 1226 (N.D. Ill. 1995); *Moore v. Fidelity Financial Services, Inc.*, 884 F. Supp. 288  
25 (N.D. Ill. 1995).

26 (5) Improper obligation of cosigners. *Lee v. Nationwide Cassell*,



1 675 N.E.2d 599 (Ill. 1996); *Taylor v. Trans Acceptance Corp.*, 641 N.E.2d 907 (Ill.  
2 App. Ct. 1994), leave to appeal denied, 647 N.E.2d 1017 (Ill. 1995); *Qualkenbush*  
3 *v. Harris Trust & Sav. Bank*, 219 F. Supp. 2d 935 (N.D. Ill. 2002).

4 **F. Other Consumer Credit Issues:** The firm has also brought a number  
5 of other Truth in Lending and consumer credit cases, mostly as class actions,  
6 involving such issues as:

7 (1) Phony nonfiling insurance. *Edwards v. Your Credit Inc.*, 148  
8 F.3d 427 (5th Cir. 1998); *Adams v. Plaza Finance Co.*, 168 F.3d 932 (7th Cir.  
9 1999); *Johnson v. Aronson Furniture Co.*, 96 C 117, 1997 U.S. Dist. LEXIS 3979  
10 (N.D. Ill. March 31, 1997), later opinion, 1993 WL 641342 (N.D. Ill., Sept. 11,  
11 1998).

12 (2) The McCarran Ferguson Act exemption. *Autry v. Northwest*  
13 *Premium Services, Inc.*, 144 F.3d 1037 (7th Cir. 1998).

14 (3) Loan flipping. *Emery v. American General*, 71 F.3d 1343 (7<sup>th</sup>  
15 Cir. 1995), limited the pernicious practice of "loan flipping," in which consumers  
16 are solicited for new loans and are then refinanced, with "short" credits for  
17 unearned finance charges and insurance premiums being given through use of the  
18 "Rule of 78s."

19 **G. Landlord-Tenant Cases:** ECLG has brought more than twenty class  
20 actions against landlords to enforce tenants' rights. Claims include failing to pay  
21 interest on security deposits or commingling security deposits. Reported decisions  
22 include: *Wang v. Williams*, 797 N.E.2d 179 (Ill. App. Ct. 2003); *Dickson v. West*  
23 *Koke Mill Vill. P'Ship*, 769 N.E.2d 971 (Ill. App. Ct. 2002); and *Onni v. Apartment*  
24 *Inv. & Mgmt. Co.*, 801 N.E.2d 586 (Ill. App. Ct. 2003).

25 **H. Bankruptcy-Related Cases:** ECLG brought a number of cases,  
26 including national class actions against Sears and General Electric, *Conley v. Sears,*  
27 *Roebuck*, 1:97-cv-11149 (D. Mass); *Fisher v. Lechmere Inc.*, 1:97-cv-3065 (N.D.  
28 Ill.), complaining that money was being systematically collected on discharged  
debts, in some cases through the use of invalid reaffirmation agreements. These

1 cases were settled and resulted in recoveries by nationwide classes. Cathleen  
2 Combs successfully argued the first Court of Appeals case to hold that a bankruptcy  
3 debtor induced to pay a discharged debt by means of an invalid reaffirmation  
4 agreement may sue to recover the payment. *Bessette v. Avco Financial Services*,  
5 230 F.3d 439 (1st Cir. 2000).

6 **I. Fair Credit Reporting Act Cases:** ECLG has filed a number of cases  
7 under the Fair Credit Reporting Act, including: *Henry v. Teletrack, Inc.*, 11 C 4424,  
8 2012 WL 769763 (N.D. Ill. March 7, 2012); *Cole v. U.S. Capital, Inc.*, 389 F.3d  
9 719 (7<sup>th</sup> Cir. 2004); *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948 (7<sup>th</sup> Cir.  
10 2006); *Perry v. First National Bank*, 459 F.3d 816 (7<sup>th</sup> Cir. 2006).

11 **J. Class Action Procedure:** Important decisions include *McMahon v.*  
12 *LVNV Funding, LLC*, 807 F.3d 872 (7<sup>th</sup> Cir. 2015); *Phillips v. Asset Acceptance,*  
13 *LLC*, 736 F.3d 1076 (7<sup>th</sup> Cir. 2013); *Crawford v. Equifax Payment Services, Inc.*,  
14 201 F.3d 877 (7<sup>th</sup> Cir. 2000); *Blair v. Equifax Check Services, Inc.*, 181 F.3d 832  
15 (7<sup>th</sup> Cir. 1999); *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7<sup>th</sup> Cir. 1997);  
16 *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010 (7<sup>th</sup> Cir. 2014) (mootness);  
17 *Ballard RN Center, Inc. v. Kohll's Pharmacy and Homecare, Inc.*, No. 118644,  
18 2015 WL 6387653 (Ill. 2015), *reh'g denied* (Jan. 28, 2016) (mootness).

19 **K. Insurance litigation:** Often securing recovery for a class requires  
20 enforcement of the rights under the defendant's insurance policy. ECLG has  
21 extensive experience with such litigation. Reported decisions in such cases include:  
22 *Record-A-Hit, Inc. v. Nat'l Fire Ins. Co.*, 880 N.E.2d 205 (Ill. App. Ct. 2007);  
23 *Pietras v. Sentry Ins. Co.*, 06 C 3576, 2007 WL 715759 (N.D. Ill., March 6, 2007),  
24 later opinion, 513 F. Supp. 2d 983 (N.D. Ill. 2007); *Auto-Owners Ins. Co. v.*  
25 *Websolv Computing, Inc.*, 06 C 2092, 2007 WL 2608559 (N.D. Ill., Aug. 31,  
26 2007); *National Fire Ins. Co. v. Tri-State Hose & Fitting, Inc.*, 06 C 5256, 2007  
27 U.S. Dist. LEXIS 45685 (N.D. Ill., June 21, 2007); *Nautilus Ins. Co. v. Easy Drop*  
28 *Off, LLC*, 06 C 4286, 2007 U.S. Dist. LEXIS 42380 (N.D. Ill., June 4, 2007).

**The Lodestar of Edelman, Combs, Latturner & Goodwin, LLC**

1 10. ECLG attorneys and paralegals have maintained contemporaneous time  
2 records since the commencement of this action. In total, attorneys and paralegals  
3 have worked a total of 762.18 hours in this action, with a total lodestar of  
4 \$420,028.50. That lodestar reflects billing rates of \$325 to \$750 per hour for  
5 attorneys and \$125 per hour for paralegals. Members of my firm and I will expend  
6 still additional time in the five months between the filing of Class Counsel's fee  
7 petition and the Final Approval Hearing. Still additional time will be expended after  
8 the Final Approval Hearing, however the Court rules.

9 **Edelman Combs, Lattuner & Goodwin, LLC's Costs**

10 11. My firm maintains all books and records regarding costs expended on each  
11 case in the ordinary course of business, which books and records evidence which  
12 checks have issued on each case and/or which accounts payable are associated with  
13 each matter. I have reviewed the records of costs expended in this matter.

14 12. Even though Class Counsel has agreed to not seek reimbursement of the  
15 costs incurred as a separate item payable from the Settlement Fund, and to include  
16 them in the request for attorneys' fees, I am advising the Court my firm incurred  
17 costs in the amount of \$16, 712.98.

18 13. On information and belief, KCC, the Claims Administrator appointed by the  
19 Court in the Preliminary Approval Order, has incurred costs for providing notice  
20 and claims administration for the Settlement. The Settlement Agreement provides  
21 that Defendants will pay KCC for its services separate and apart from the Cash  
22 Component of the Settlement Agreement and Release at §§ 8.06-8.07. KCC will  
23 submit an itemized invoice of its costs prior to the Final Approval Hearing.

24 **Reasonableness of Hourly Rates**

25 14. My firm's hourly rates are reasonable in respect to the ranges charged  
26 by comparable law firms in the State of California. My hourly rate is \$750.00. This  
27 rate was recently approved by the Court in *Adkins v. Nestle Purina PetCare*  
28 *Company et al.*, 12-cv-2871 (N.D. Ill. June 23, 2015). I believe my hourly rate is

1 reasonable in that is much lower than rates charged by other attorneys of  
2 comparable experience and skill.

3 **Overview of Edelman, Combs, Lattuner & Goodwin's Word In This Action**

4 15. Plaintiffs alleged that Defendants violated the Telephone Consumer  
5 Protection Act by using an automated telephone dialing system or an artificial or  
6 prerecorded voice to contact Plaintiffs and Class Members on their respective  
7 cellular telephones without prior express consent.

8 16. To provide the Court with an overview of the work done by my firm in this  
9 case, without requiring the review of our voluminous time records themselves, I  
10 have divided my firm's work into specific phases that track the progress of the  
11 litigation from our initial investigation through settlement.

12 17. *Initial Case Investigation.* The initial investigation of Plaintiff Dave  
13 Scardina's claims involved ascertaining the merits of Mr. Scardina's claims; this  
14 involved discussing the facts with co-counsel, Curtis Warner, of Warner Law Firm,  
15 LLC, namely the number and type of calls Mr. Scardina received from Midland, his  
16 ability to document those calls, whether he ever consented to receive the calls,  
17 whether and how he ever communicated to Defendants that he no longer wished to  
18 receive the calls. After discussing joint prosecution of the action with Mr. Warner, a  
19 complaint was drafted and revised and per the custom in the Seventh Circuit, a  
20 motion for, and a memorandum in support of, class certification was drafted, for  
21 filing with the Complaint.

22 18. *Pre-Transfer Litigation.* In the five months between the date the  
23 *Scardina* action was filed in the United States District Court for the Northern  
24 District of Illinois and the date the Judicial Panel on Multidistrict Litigation ordered  
25 the transfer of the case to this Court, ECLG, *inter alia*, filed and served the  
26 Complaint and the Motion for Class Certification with accompanying  
27 Memorandum of Law, drafted and served written discovery on Defendants, took the  
28 third party deposition of James Noble, President of Noble Systems Corporation, the  
company that manufactured the telephone dialing system used by Defendants,

1 reviewed Defendants' discovery responses, conferred with Defendants' counsel  
2 with respect to the responses, drafted and filed a motion to compel directed at  
3 Defendants, issued three subpoenas for documents to Plaintiff's cellular telephone  
4 service provider, Cricket Communications, LLC, responded to a motion to reassign  
5 the case to another judge in the Northern District of Illinois as related to an earlier  
6 filed case, and attended a number of court status and motion hearings.

7 19. *Pre-Mediation Litigation In This Court.* After the *Scardina* case was  
8 transferred to this Court, ECLG was involved with conferring with counsel in the  
9 related cases, filing the motion for appointment as Interim Co-Lead Counsel,  
10 drafting a Consolidated Complaint, drafting and issuing written discovery requests  
11 and Rule 30(b)(6) deposition notices, and drafting a brief in opposition to  
12 Defendants' Motion to Stay on Primary Jurisdiction Grounds.

13 20. *Mediation.* Co-counsel Douglas J. Campion and I, along with other  
14 Plaintiffs' counsel and liaison counsel, attended approximately eleven mediation  
15 sessions in this case with the Hon. Herbert H. Hoffman, (Ret.) of Judicate West.  
16 All lead counsel spent many hours in preparing for each of the many mediation  
17 sessions. That required working with Defendants' counsel for more than a year in  
18 order to determine the size of the class, the number of calls to cellphones and way  
19 to achieve a fair settlement for all class members.

20 21. *Confirmatory Discovery.* We spent numerous hours drafting confirmatory  
21 discovery, including interrogatories and document requests, and preparing the  
22 deposition notice for deposition of Defendants' F.R.C.P. 30(b)(6) witness. We  
23 assisted Douglas J. Campion in taking that deposition and we both reviewed all the  
24 discovery responses to confirm the information we were provided during the  
25 mediation about the class size and the methods and procedures used to obtain the  
26 class list was true and accurate.

27 22. *Preliminary Approval and Overseeing Settlement Administration.* We spent  
28 considerable amount of time negotiating the details of the Settlement as is reflected  
in the Settlement Agreement. The length of time negotiating the details of the

1 Settlement was necessary because of the many unusual details in this case relating  
2 to notice and a number of persons that would not receive a notice postcard because  
3 their names and addresses were not in Defendants' records as tied to the cellphone  
4 numbers called. We also spent much time drafting and revising the preliminary  
5 approval motion and supporting documentation. Once this matter was granted  
6 preliminary approval, both co-lead counsel spent numerous hours overseeing the  
7 notice and administrative process. This included substantial time answering  
8 questions from Class members, via email, letters, and phone calls. In doing so, our  
9 firms worked closely with the Claims Administrator to process those claims and  
10 answer any questions.

11 23. *Anticipated Additional Hours Expended.* As this fee petition is being filed  
12 five months before the Final Approval Hearing, I anticipate that ECLG will expend  
13 a significant amount of time working on the case in the meantime, as well as time  
14 spent after the Final Approval Hearing.

15 **Attorneys' Fees and Multiplier Sought**

16 24. All attorneys and legal assistants in my firm are required to and do in fact  
17 keep track of their time on a contemporaneous basis, on computer. Everyone enters  
18 their time into a computer program, by case number. The computer system  
19 automatically sorts the entries by case and generates totals. Expenses are entered  
20 into the same computer program as they are incurred. As of March 21, 2016,  
21 ECLG's lodestar totals \$419,078.50 for this Action.

22 25. We seek Court approval of the Parties' agreement that Class Counsel's  
23 compensation for the hours worked on this case will be paid by Defendants separate  
24 and apart from the Cash Component of the Settlement, and in the amount of  
25 \$2,400,000. This amount is fair and reasonable as Class Counsel have expended a  
26 substantial number of hours prosecuting the case over a period of more than five  
27 years and the settlement attained for the Class is fair and reasonable. Moreover,  
28

1 using the collective lodestars of all the counsel who worked on the case,  
2 \$1,322,760, the \$2,400,000 sought includes a multiplier of 1.81, a multiplier well  
3 within the range permitted in the Ninth Circuit.

4 27. For all the reasons set forth in the Fee Petition, I believe a 1.81 multiplier  
5 is appropriate here. This is not a case an attorney would agree to take on without the  
6 possibility of a multiplier being awarded. This is because payment is contingent on  
7 success – most of the time it would not be economical for a client to hire an  
8 attorney on an hourly basis to pursue a TCPA statutory damages claim where the  
9 maximum recovery is \$1,500/call -- the litigation risks involved, and the lost  
10 opportunity costs associated with undertaking this action, *i.e.*, the money that could  
11 have been made from devoting time and money to other cases. ECLG took this case  
12 with no guarantee of ever being paid and faced substantial risk if the case had  
13 proceeded to trial. Under the circumstances, a multiplier of 1.81 is warranted.

14 **Incentive Awards Being Sought**

15 28. As set forth in the Motion for Preliminary Approval, the named Class  
16 Representatives, Christopher Robinson, Eduardo Tovar, and Dave Scardina, are  
17 applying for incentive awards of \$2,500 each for a total of \$7,500, to be paid from  
18 the Cash Component of the Settlement Fund. The Class Representatives have been  
19 active in this litigation and provided critical information to their counsel, which  
20 made the successful litigation of this matter possible. Each of them assisted with the  
21 factual investigation in to her claims. They also reviewed and approved the  
22 settlement. Based on the amount of work and involvement by each of them, a  
23 \$2,500 incentive award for each Class Representative is fair and reasonable.

24 Executed in Chicago, Illinois on March 22, 2016.

25  
26   
27 \_\_\_\_\_  
28 James O. Lattuner