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Attorneys for Plaintiffs and Proposed  
Settlement Class

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

**IN RE: MIDLAND CREDIT  
MANAGEMENT,  
INC., TELEPHONE  
CONSUMER PROTECTION  
ACT LITIGATION**

**Case No.: 3:11-md-02286-MMA-  
MDD CLASS ACTION**  
**Member cases: 10-cv-02261**  
**10-cv-02600**  
**10-cv-02368**  
**10-cv-02370**

**DECLARATION OF JOSHUA B.  
SWIGART IN SUPPORT OF  
MOTION FOR ATTORNEYS'  
FEES AND COSTS AND  
INCENTIVE PAYMENTS**  
Hon. Michael M. Anello  
Courtroom: 3  
Hearing Date: August 26,  
2016  
Time: 9:00 a.m

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2 1. I am a partner of the law firm of Hyde & Swigart and a counsel of record  
3 for Plaintiff Christopher Robinson in this matter. I am admitted to this  
4 Court and am a member in good standing of the State Bar of California. I  
5 submit this declaration in support of Plaintiff's Motion for Attorneys' Fees  
6 and Costs and for Incentive Award in which Plaintiff seeks to have the  
7 Court approve attorneys' fees in the amount of \$2,400,000 as negotiated in  
8 the Settlement Agreement, subject to Court approval. That amount will  
9 also compensate Plaintiffs' counsel for all the litigation costs they  
10 incurred. That agreement is set forth in the Settlement Agreement filed  
11 with the Preliminary Approval Motion, ECF No. 281-3 at Section 5.05.

12 **ATTORNEYS' FEES AND COSTS INCURRED**

13 2. At Hyde & Swigart, we maintain contemporaneous time records reflecting  
14 the time spent on this and other matters. According to the time records my  
15 firm maintained in this case, we have incurred 117.80 hours. At my billing  
16 rate of \$595 per hour, that is a lodestar of \$70,091.00. I was the only  
17 attorney at my firm working on this case.<sup>1</sup>  
18 3. My firm's records indicate we have incurred \$5,313.61 in litigation costs.  
19 My firm's experience and years in practice, taken with the current legal  
20 market rates, are sufficient to justify my hourly rate of \$595.

21 **EXPERIENCE OF HYDE & SWIGART AND JOSHUA B. SWIGART**

22 4. In support of my requested hourly rate, I provide the following  
23 information. I have extensive experience in consumer class action and  
24 other complex litigation. My skills in developing the factual and legal  
25 record and settling the case were essential to achieving this result.

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<sup>1</sup> *Mount v. Wells Fargo, N.A.*, 2016 Cal. App. Unpub. LEXIS 969, at [14] (2<sup>nd</sup> App. Dist. Div. 8)  
28 (Holding that there was sufficient evidence to justify a rate of \$595 per hour for class counsel.)

5. Moreover, my firm's history of aggressive, successful prosecution of consumer class actions made credible their commitment to pursue this litigation until it provided a fair result for the Class. Through my skill, reputation, and ability, I was able to obtain a class settlement providing outstanding relief for the Class.
6. To date, there have been no objections filed or received by Class Counsel, submitted through the ECF system, or mailed to the Claims Administrator, as to the settlement and/or the requested payment of attorneys' fees and costs.
7. I have filed and litigated many other class actions based on the Telephone Consumer Protection Act in the past four years.
8. The following is a list of other TCPA class actions which I am or have been personally involved in:
  - a. *Bellows v. NCO Financial Systems, Inc.*, 07-CV-01413 W(AJB);B.
  - b. *Connor v. JPMorgan Chase Bank*, 10-CV-1284 DMS(BGS);
  - c. *Lemieux v. Global Credit & Collection Corp.*, 08-CV-1012 IEG(POR);
  - d. *Malta v. Wells Fargo Home Mortgage, et al.*, 10-CV-1290 IEG(BLM);
  - e. *Robinson v. Midland Funding, LLC*, 10-CV-2261 MMA(AJB);
  - f. *Arthur v. SLM Corporation*, 10-CV-00198 JLR;
  - g. *Ryabyshchuk v. Citibank (South Dakota) N.A.*, 11-CV-1236 IEG(WVG);
  - h. *Ridley v. Union Bank, N.A.*, 11-CV-1773 DMS(NLS);
  - i. *Allen v. Wells Fargo Auto Finance, Inc.*, 10-CV-02657 W (JMA);
  - j. *Gutierrez, et al. v. Barclays Group, et al.*, 10-CV-1012 DMS(BGS);
  - k. *Lo v. Oxnard European Motors, LLC, et al.*, 11-CV-1009 JLS(MDD).
9. I have been appointed and approved by various courts as class counsel on similar TCPA class actions, including:
  - a. *Bellows v. NCO Financial Systems, Inc.*, 07-CV-01413 W(AJB);

- b. *Lemieux v. Global Credit & Collection Corp.*, 08-CV-1012 IEG(POR);
- c. *Lo v. Oxnard European Motors, LLC, et al.*, 11-CV-1009 JLS(MDD);
- d. *Gutierrez, et al. v. Barclays Group, et al.*, 10-CV-1012 DMS(BGS);
- e. *Arthur v. SLM Corporation*, 10-CV-00198 JLR (Preliminarily approved, pending final approval);
- f. *Connor v. JPMorgan Chase Bank*, 10-CV-1284 DMS(BGS) (Preliminarily approved, pending final approval);

10. I have undergone extensive training in the area of the Fair Debt Collection Practices Act and the TCPA. The following is a list of recent training conferences I attended:

- a. National Consumer Law Conference; Oakland, CA – 2003;
- b. National Consumer Law Conference (FDCPA Mini-Conference); Kansas City, MO – 2004;
- c. National Consumer Law Conference; Boston, MA – 2004;
- d. Five-day extensive one-on-one training with The Barry Law Office; San Diego, CA –2005;
- e. Three-day FDCPA Mini-Conference; Minneapolis, MN – 2005;
- f. Four-day extensive one-on-one training with The Barry Law Office; Minneapolis, MN – 2005;
- g. Four-day National Association of Consumer Advocates Conference; Minneapolis, MN – 2005;
- h. Four-day National Consumer Law Center Conference; Nashville, TN – 2008;
- i. Three-day National Consumer Law Center Conference; Portland, OR - 2008;
- j. Speaker at a Three-day National Consumer Law Center Conference; San Diego, CA - 2009.

- k. Speaker ABA/JAG presentation to military service members and counsel; MCRD, San Diego CA – 2010;
  - l. Speaker ABA teleconference on defending consumer credit card debt and related issues; San Diego, CA - 2010.
  - m. Three-day National Consumer Law Center Conference; Seattle, WA - 2011;
  - n. Two-day FDCPA Mini-Conference; New Orleans; LA - 2012.
  - o. Two-day National Consumer Law Center Conference on the FDCPA; Seattle, WA - 2012;
  - p. National Consumer Law Center Conference, National Convention; Baltimore, MD - 2013;
  - q. Speaker ABA National Conference, Business Litigation Section; Trends in Consumer Litigation; San Francisco, CA - 2013;
  - r. Speaker National Consumer Law Center; Nuts and Bolts of TCPA Litigation; San Antonio, TX - 2014;
  - s. Speaker San Diego County Bar Association; Convergence of the FDCPA and Consumer Bankruptcy; San Diego, CA – 2014;
  - t. Guest Speaker at California Western School of Law; Consumer Law – 2014;
  - u. Speaker at NCLC; Miami, FL – 2015;
  - v. Speaker at NACA; San Antonio, TX – 2015; and,
  - w. Speaker Three-day FDCPA Mini-Conference; Miami, FL – 2016
11. A member in good standing of the following local and national associations:
- a. National Association of Consumer Advocates;
  - b. Federal Bar Association;
  - c. Consumer Attorneys of California;

- 1 d. San Diego County Bar Association;
- 2 e. Riverside County Bar Association;
- 3 f. San Bernardino County Bar Association;
- 4 g. Enright Inns of Court. (2011-2014)
- 5 h. American Association for Justice
- 6 12. I have been requested to, and have made, regular presentations to
- 7 community organizations regarding debt collection laws. The following
- 8 are a few examples of such presentations:
- 9 a. California Western School of Law, 2005;
- 10 b. Canyon Springs High School, Moreno Valley, CA 2003-2008; Careers in
- 11 the legal field.
- 12 c. Guest speaker on national talk radio. Topic: the passage of House Bill
- 13 allowing the IRS to send past due consumer tax bills to private debt
- 14 collection firms;
- 15 d. Regular host on 103.7 Free FM on the radio show Know The Law. Topics
- 16 addressing specific collection issues. Appearances number more than ten
- 17 shows;
- 18 e. Department of Defense; JAG Office, Naval Station San Diego (2006);
- 19 f. Department of Defense; JAG Office, Naval Station San Diego, relevant
- 20 Fair Credit Reporting issues and the Fair Debt Collection Practices Act
- 21 (2008);
- 22 g. American Bar Association – Legal Assistance for Military Personnel,
- 23 Naval Station –North Island (2008);
- 24 h. National Consumer Law Center - E-Discovery issues - San Diego (2009);
- 25 i. National Association of Retail Collection Attorneys - Prosecuting
- 26 consumer cases -San Francisco (2009);
- 27 j. American Bar Association - Seminar on defending consumer collection
- 28 cases (2010);

- k. Military Law Committee (MCRD) - Representing military service members in consumer related issues - San Diego (2010);
  - l. Speaker at a Three-day National Consumer Law Center Conference; San Diego, CA – 2009;
  - m. Speaker at an ABA/JAG presentation to military service members and counsel; MCRD, San Diego – 2010;
  - n. Speaker at an ABA teleconference on defending consumer credit card debt and related issues; San Diego, CA – 2010;
  - o. Speaker ABA on Conducting and Managing Internal Investigations of Financial Institutions; National ABA Conference; San Francisco – 2013.
13. My experience in litigating class actions and my years in practice allowed me to provide outstanding monetary relief to this class through settlement, and are more than sufficient to justify my firm’s appointment as class counsel in this case. Therefore, my experience and years in practice are sufficient to justify my hourly billing rate in this case of \$595 per hour.
14. This case is such a case that would not have been pursued by any counsel in the local geographical area unless a multiplier would be awarded. Such a multiplier is expected because of the type or class of cases in which the Telephone Consumer Protection Act (“TCPA”) are. There is no fee-shifting statute in the TCPA. Furthermore, there is absolutely no incentive for a client to hire an attorney on an hourly basis to pursue the statutory damages remedy for a TCPA violation that is \$500 for each negligent violation and \$1,500 for each intentional violation. That would of course be non-economical for any client as the attorneys’ fees would far exceed any recovery.
15. Furthermore, cases in which I charge an hourly rate take into account that I will likely be paid for my work. If I am not being paid, I can withdraw

1 from the case if necessary and not have to be committed to doing work for  
2 perhaps years on a case without knowing if I will be paid or not. Here,  
3 and in this class of TCPA cases, I and other counsel take these cases on  
4 only because the attorneys in this local area expect to be paid a multiplier  
5 if the case is successful. Here the case was successful as is explained  
6 below.

7 16. Based on the type of case, the fact there is not a fee shifting provision and  
8 the result obtained, the multiplier sought is warranted in this case. I took  
9 this case on contingency, with no guarantee of ever being paid and faced  
10 substantial risk should the case proceed to trial. From the onset of this  
11 litigation my firm and co-counsel have expended our own resources with  
12 the risk that we would recover nothing.

13 **INCENTIVE PAYMENTS**

14 17. As set forth in the Motion for Preliminary Approval, three named class  
15 representatives are applying for incentive awards. All three Class  
16 Representatives have been active in this litigation and provided critical  
17 information to their counsel which made the successful litigation of this  
18 matter possible. See the declarations of the class representatives filed  
19 herewith. The Class Representatives were critical in the investigation of  
20 the matters surrounding the litigation, the filing of this action and the  
21 settlement process. We seek \$2,500 for each of the three class  
22 representatives to be paid from the Cash Component of the Settlement  
23 Fund as per the Settlement Agreement.  
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18. Based on the amount of work and involvement by Plaintiffs the incentive awards in this case are justified.

I declare under penalty of perjury under the laws of the State of California and the United States of America, that the foregoing is true and correct and that this declaration was prepared at San Diego, California, on March 21, 2016.

Date: March 21, 2016

By: /s Joshua B. Swigart  
Joshua B. Swigart