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18 **UNITED STATES DISTRICT COURT**
19 **SOUTHERN DISTRICT OF CALIFORNIA**
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IN RE: MIDLAND CREDIT MANAGEMENT, INC., TELEPHONE CONSUMER PROTECTION ACT LITIGATION	CASE NO. 11-md-2286-MMA MDD CLASS ACTION
	DECLARATION OF CURTIS C. WARNER IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARD FOR PLAINTIFF
	DATE: AUG. 26, 2016
	TIME: 9:00 A.M.
	CTRM: 3A
	THE HON. MICHAEL M. ANELLO

1 Law (now Michigan State University – College of Law), *cum laude*, in 2002.
2 During law school, I was the Editor-in-Chief for the Michigan State
3 University – Detroit College of Law *Journal of Medicine and Law* and
4 interned with the United States Army Judge Advocate General’s Office at
5 Fort Carson in Colorado.

6 2. In August 2002, I began working as an associate attorney at Collins & Blaha,
7 P.C., an employment law firm that represents various school districts in the
8 State of Michigan.

9 3. In April 2003, I worked as a staff attorney at Michigan Migrant Legal
10 Assistance Project, Inc., (now Migrant Legal Aid) in Grand Rapids,
11 Michigan, representing migrant farm workers in various labor and consumer
12 disputes before administrative agencies, federal and state courts. During that
13 time I represented a client before the Michigan Supreme Court. *Lopez v.*
14 *Hardy’s Holsteins LLC*, 2005 MIWCLR (LRP) LEXIS 151 (Mich. WCAC,
15 June 24, 2005) *sub nom. Lopez v. Worker’s Compensation Appellate*
16 *Comm’n.*, No. 263842, 2005 Mich. App. LEXIS 3312 (Mich. App., Sept. 23,
17 2005); 704 N.W. 2d 709, 474 Mich. 893 (Mich. 2005).

18 4. From March 2005 to September 2006, I was an associate attorney at the
19 consumer class action law firm of Edelman Combs Lattuner & Goodwin
20 LLC in Chicago, Illinois. “Edelman, Combs, Lattuner & Goodwin, LLC, [is]
21 a small Chicago law firm specializing in consumer credit, debt collection,
22 FDCPA, predatory lending practices, and class action litigation.” *Miller v.*
23 *Midland Credit Mgmt.*, 08 C 780, 2009 U.S. Dist. LEXIS 16273 * 6-7 (N.D.
24 Ill. Mar. 2, 2009).

25 5. In October 2006, I started Warner Law Firm, LLC, which represents
26 consumers in the federal courts of Illinois, Michigan, Indiana and in the
27 Circuit Court for Cook County, Illinois and other outlying county circuit
28 courts.

1 6. Since Warner Law Firm, LLC's founding in 2006, I have been approved as
2 class counsel in the following matters to which final approval of the parties'
3 class action settlement has been granted: *Vasquez v. Zara USA, Inc.*, 15 C
4 3433 (N.D. Ill. Mar. 9, 2016); *Florence Mussat M.D., S.C. v. Insurance*
5 *Group of America Holdings, L.L.C. et al*, 13 C 7798 (N.D. Ill. May 7, 2015);
6 *Krishnan v. Autovest LLC*, 13 C 8654 (N.D. Ill. Mar. 27, 2015); *Paci v.*
7 *Elmhurst Auto Werks, LTD., d/b/a Elmhurst BMW, Ltd.*, 14 C 1158 (N.D. Ill.
8 Feb. 12, 2015); *Prusak v. Lumber Liquidators, Inc.*. 12 C 6984 (N.D. Ill. Nov.
9 11, 2014); *Florence Mussat M.D., S.C. v. Betterdoctor, Inc.*, 13 C 8377 (N.D.
10 Ill. July 10, 2014); *Rincon v. Taqueria Los Comales #1, Inc.*, 13 C 2712 (N.D.
11 Ill. Apr. 30, 2014); *Sanders et. al. v. W&W Wholesale, Inc.*, 11 C 3557 (N.D.
12 Ill. Apr. 11, 2014); *Vasquez v. Bargains in a Box, Inc.*, 13 C 3964 (N.D. Ill.
13 Mar. 27, 2014); *Florence Mussat M.D., S.C. v. Global Healthcare Resource,*
14 *LLC*, 11 C 7035 (N.D. Ill. Nov. 1, 2013); *Tang v. Medical Recovery*
15 *Specialists Inc.*, 11 C 2109 (N.D. Ill); *Tang v. Pita Inn Inc*, 11 C 3833 (N.D.
16 Ill. May 2, 2012); *Balbarin v. North Star Acquisition, LLC, et al.*, 10 C 1846
17 (N.D. Ill. Apr. 12, 2012); *O'Hara v. Medieval Times USA, Inc.*, 3:10-cv-751
18 (D. N.J. Mar. 6, 2012); *Todd v. HB Windows and Doors, Inc.*, 10 C 4986
19 (N.D. Ill. Aug. 18, 2011); *Seppanen v. Krist Oil Co.*, 2:09-cv-195 (W.D.
20 Mich. Aug. 9, 2011); *Vallejo v. National Credit Adjusters, LLC*, 10-cv-103
21 (N.D. Ind. Nov. 3, 2010); *Mitchem v. Northstar Location Services, LLC*, 09
22 C 6711, (N.D. Ill. May 13, 2010); *Housenkamp v. Weltman, Weinberg &*
23 *Reis, Co. of Michigan*, Case No. 1:09-cv-10613-TLL-CEB (E.D. Mich. May
24 11, 2010); *Kern v. LVNV Funding, Inc.*, 09 C 2202, (N.D. Ill. Jan. 21, 2010);
25 *Prieto et al. v. HBLC, Inc. et al.*, 08 C 2817 (N.D. Ill. Dec. 15, 2008);
26 *Dobson v. Asset Acceptance LLC*, 07 C 6203, (assigned as related to 07 C
27 5967) (N.D. Ill. 2008); *Horton v. IQ Telecom*, 07 C 2478 (N.D. Ill. May 5,
28 2008).

- 1 7. While as an associate at Edelman Combs Lattener & Goodwin, LLC, I was
2 materially involved at some point in the litigation in the following consumer
3 matters that were certified as a class action or were settled on a class basis as
4 follows: *Cavin v. Home Loan Center, Inc.*, 236 F.R.D. 387 (N.D. Ill. 2006);
5 *Larson v. Capital One Auto Finance, Inc.* 06 C 1174, 2007 U.S. Dist. LEXIS
6 15620 (N.D. Ill. March 5, 2007); *Thomas v. Capital One Auto Finance, Inc.*,
7 06 C 643, 2006 U.S. Dist. LEXIS 81358 (N.D. Ill. Oct. 24, 2006); *Kudlicki v.*
8 *Capital One Auto Finance, Inc.*, 06 C 1918, 2006 U.S. Dist. LEXIS 81103
9 (N.D. Ill. Nov. 2, 2006); *Pavone v. Aegis Lending Corp.*, 05 C 5129, 2006
10 U.S. Dist. LEXIS 62157 (N.D. Ill. Aug. 31, 2006); *Thomas v. Arrow*
11 *Financial Services, LLC*, 05 C 5699, (N.D. Ill.); *Holt v. Wells Fargo*
12 *Financial Acceptance America, Inc.*, 06 C 1949 (N.D. Ill) combined with
13 *Perez v. Z Frank LLC*, 06 C 45 (N.D. Ill.); *Smith v. Rockenbach Chevrolet*
14 *Sales, Inc.* 05 C 5454 (N.D. Ill.); *Cavin v. Bill Jacobs Joliet, L.L.C.*, 05 C
15 5025 (N.D. Ill.); *Miller v. Ocwen Federal Bank FSB*, 05 C 308 (N.D. Ill.);
16 *Asher v. Van Ru Credit Corp.*, 04 C 5947 (N.D. Ill); *Hale v. East Lake*
17 *Development & Mgt.*, 2000 CH 16139 (Cook County, Illinois); and *Fox v.*
18 *Marquette Management, Inc.* 2002 CH 12449 (Cook County, Illinois).
- 19 8. I was the primary brief writer in the following cases: *Nicaj v. Shoe Carnival,*
20 *Inc.*, No. 14-716, Petition for Writ of Certiorari (U.S. Dec. 16, 2014); *Redman*
21 *et al. v. RadioShack Corp.*, 768 F.3d 622 (7th Cir. 2014) (representing
22 objectors in the *RadioShack* case and the plaintiff in the consolidate matter
23 *Nicaj v. Shoe Carnival, Inc.*); *Schlacher v. Law Offices of Phillip J. Rotche &*
24 *Assocs., P.C.*, 574 F.3d 852 (7th Cir. 2009); *Phinn v. Capital One Finance,*
25 *Inc.*, 502 F. Supp. 2d 625 (E.D. Mich. 2007); *Cavin v. Home Loan Center,*
26 *Inc.*, 236 F.R.D. 387 (N.D. Ill. 2006); *Florence Mussat M.D., S.C., v. Power*
27 *Liens, LLC*, 13 C 7853, 2014 U.S. Dist. LEXIS 141561 (N.D. Ill. Oct. 6,
28 2014); *Jones v. Union Pacific Railroad Co.*, 12 C 771, 2014 U.S. Dist. LEXIS

1 781 (N.D. Ill. Jan. 6, 2014); *Florence Mussat M.D., S.C., v. Global*
2 *Healthcare Resources, LLC*, 11 C 7035, 2013 U.S. Dist. LEXIS 35107 (N.D.
3 Ill. Mar. 13, 2013); *Sanders v. W&W Wholesale*, 11 C 3557, 2012 U.S. Dist.
4 LEXIS 128590 (N.D. Ill. Sept. 11, 2012); *Todd v. Target Corp.*, 10 C 5598,
5 2012 U.S. Dist. LEXIS (N.D. Ill. Mar. 30, 2012); *Sanders v. W&W*
6 *Wholesale*, 11 C 3557, 2011 U.S. District LEXIS 117860 (N.D. Ill. Oct. 12,
7 2011); *Mitchem v. Ill. Collection Serv.*, 09 C 7274, 2010 U.S. Dist. LEXIS
8 76581 (N.D. Ill. Jul. 29, 2010), *Peralta v. Accept Acceptance, LLC*, 1:07-cv-
9 1270, 2009 U.S. Dist. LEXIS 18195 (W.D. Mich. March 10, 2009); *Glover v.*
10 *Mary Jane M. Elliot, P.C.*, Case No. 1:07-cv-648, 2007 U.S. Dist. LEXIS
11 73605 (W.D. Mich. Oct. 2, 2007); *Chavez v. Bowman, Heintz, Bocia &*
12 *Vician*, 07 C 670, 2007 U.S. Dist. LEXIS 61936 (N.D. Ill. Aug. 22, 2007);
13 *Lopez v. Hardy's Holsteins LLC*, 2005 MIWCLR (LRP) LEXIS 151 (Mich.
14 WCAC, June 24, 2005) *sub nom. Lopez v. Worker's Compensation Appellate*
15 *Comm'n.*, No. 263842, 2005 Mich. App. LEXIS 3312 (Mich. App. Sept. 23,
16 2005); 704 N.W. 2d 709, 474 Mich. 893 (Mich. 2005).

17 **EXPERIENCE RELEVANT TO THE TELEPHONE CONSUMER PROTECTION ACT**

- 18 9. I have filed and litigated class actions based on the Telephone Consumer
19 Protection Act.
- 20 10. I was also the primary brief writer on *Mitchem v. Illinois Collection Service*,
21 271 F.R.D. 617 (N.D. Ill. 2011) and *Balbarin v. North Star Capital*
22 *Acquisition*, 2011 U.S. Dist. LEXIS 686 (N.D. Ill. Jan. 5, 2011), which are the
23 first two cases in the nation granting a contested class certification motion for
24 claims brought under the Telephone Communication Protection Act for calls
25 to cellular telephones without express prior consent.
- 26 11. I contributed to the writing of the plaintiffs' joint brief in a TCPA matter of
27 first impression and was second chair at oral argument in the Seventh Circuit
28 in *Soppet v. Enhanced Recovery, Co., LLC*, 679 F.3d 637 (7th Cir. 2012).

Curtis C. Warner's Lodestar

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3 12. My firm has maintained contemporaneous time records and time notes since
4 the commencement of this action. In 2011, while this case was pending in the
5 Northern District of Illinois, and to effectuate an organized transition of the
6 case to co-counsel of the MDL, and to review the terms of the settlement
7 agreement with Plaintiff Scardina, I have worked a total of 32.2 hours prior to
8 August 1, 2011, 11.9 hours between August 1, 2011 and August 1, 2012, 3
9 hours between August 1, 2012 and August 1, 2013, 1 hour between August 1,
10 2013 and August 1, 2014, 5 hours in 2015, and 4 hours in 2016 in this action,
11 with a total lodestar of \$20,724. That lodestar reflects my billing rates
12 throughout this case spanning over 5 ½ years, from \$320 per hour in May
13 2011 to the present rate of \$500 per hour. I am the only attorney at my firm
14 billing time for the fees sought in this case.

15 13. My current hourly rate for paying clients is \$500 per hour. My hourly rate
16 has been court approved in the following matters: *Schwersenska v. Brookfield*
17 *Consulting Group, Inc.*, 13 cv 50383 (N.D. Ill. Feb. 17, 2015) (finding that
18 Plaintiff's requested hourly rate of \$450 per hour was "a reasonable rate")
19 *report and recommendation affirmed* (Mar. 9, 2015); *Prusak v. Lumber*
20 *Liquidators, Inc.*, 12 C 6984 (N.D. Ill. Nov. 11, 2014), (\$450 per hour); *Tang*
21 *Rincon v. Taqueria Los Comales #1, Inc.* (N.D. Ill. Apr. 30, 2014) (\$400 per
22 hour); *Florence Mussat M.D., S.C. v. Global Healthcare Resource, LLC*, 11 C
23 7035 (N.D. Ill. Nov. 1, 2013) (approving hourly rates of \$400 for work done
24 after August 1, 2013, \$360 August 1, 2012-2013, \$340 August 1, 2011-2012,
25 and \$320 for work done prior to August 1, 2011. *Bautista v. Freedman*
26 *Anselmo Lindberg LLC*, 13 C 3962 (N.D. Ill. Sept. 24, 2013) (\$360 hourly
27 rate for work done prior to August 1, 2013); *Burton et al v. RAB Performance*
28 *Recoveries L.L.C.*, 11-cv-261-GJQ (W.D. Mich. Nov. 7, 2011) (\$300); *Todd*

1 *et al v. New Quick Market*, 11 C 1532 (N.D. Ill. July 7, 2011) (\$320); *Sanders*
2 *v. Golden Kitchen*, 10 C 1290 (N.D. Ill. Aug. 5, 2010) (\$305); *Todd et al. v.*
3 *Licores El Potrillo*, 10 C 1135 (N.D. Ill. July 8, 2010) (\$305); and *Sterling v.*
4 *Blatt Hasenmiller*, 09 C 1288, (N.D. Ill. Apr. 23, 2009) (\$305). In *Todd v.*
5 *HB Windows and Doors, Inc.*, 10 C 4986 (N.D. Ill. Aug. 18, 2011) the court
6 in a class action brought under the FACTA amendments to the Fair Credit
7 Reporting Act awarded Mr. Warner 1/3 of the settlement fund and in doing so
8 commented on the record that it was more than a fair amount acknowledging
9 that it was slightly higher than what the *Lodestar* calculation would have been
10 at \$305 per hour for work done prior to August 1, 2010, \$320 per hour for
11 work done prior to August 1, 2011, and \$340 per hour for work done after
12 August 1, 2011.

13 Warner Law Firm, LLC's Costs

- 14 14. My firm maintains all books and records regarding costs expended on each
15 case in the ordinary course of business, which books and records evidence
16 which checks have issued on each case and/or which accounts payable are
17 associated with each matter. I have reviewed the records of costs expended in
18 this matter.
- 19 15. Even though Class Counsel has agreed to not seek reimbursement of the costs
20 incurred as a separate item payable from the Settlement Fund, and to include
21 them in the request for attorneys' fees, I am advising the Court my firm
22 incurred the following costs: \$350 filing fees and \$25 fee for a Court
23 conference call.

24 Reasonableness of Hourly Rates

- 25 16. My hourly rate is reasonable in respect to the ranges charged by comparable
26 consumer law firms in the Northern District of Illinois and awards issued to
27 attorneys at those firms.
28

- 1 17. Alexander H. Burke’s of Burke Law Offices, LLC, admitted to the Illinois bar
2 on November 6, 2003, and located in Chicago, Illinois, hourly rate for TCPA
3 consumer class actions is \$500 per hour. *In re Enhanced Recovery Company,*
4 *LLC, Telephone Consumer Protection Act Litigation*, 6:13-md-2398-RDB-
5 GJK, Doc. 123-9 (M.D. Fla. July 22, 2014). Keith J. Keogh’s, of Keogh Law,
6 Ltd., admitted to the Illinois bar on May 6, 1999 and located in Chicago,
7 Illinois, billing rate in consumer cases is \$475 per hour. *In re Enhanced*
8 *Recovery Company, LLC, Telephone Consumer Protection Act Litigation*,
9 6:13-md-2398-RDB-GJK, Doc. 123-7 (M.D. Fla. July 22, 2014).
- 10 18. In *Beesley v. Int’l Paper Co.*, 3:06-cv-703-DRH-CJP, 2014 U.S. Dist. LEXIS
11 12037 (S.D. Ill. Jan. 31, 2014) the court held that in the context of a class
12 action, “for attorneys with 5-14 years of experience, \$545 per hour” was a
13 reasonable hourly rate. *Id.* * 11-12.
- 14 19. For paying clients, as of August 1, 2010, my hourly rate was \$320 per hour.
15 On August 1, 2011, the firm increased the rate for my services to \$340 per
16 hour. On August 1, 2012, the firm increased my hourly rate to \$360. On
17 August 1, 2013, the firm increased my hourly rate to \$400. On August 1,
18 2014, the firm increased my hourly rate to \$450 per hour. On August 1, 2015,
19 the firm increased my hourly rate to \$500.
- 20 20. As the Seventh Circuit has stated, “the best evidence of the market value of
21 legal services is what people pay for it. Indeed, this is not ‘evidence’ about
22 market value; it is market value.” *Balcor Real Estate Holdings, Inc.. v.*
23 *Walentas-Phoenix Corp.*, 73 F.3d 150, 153 (7th Cir. 1996).

24 **Overview of Curtis C. Warner’s Efforts in this Action**

- 25 21. Plaintiff Scardina was a prior client of the law firm. In working up the case, I
26 contacted Co-counsel James Lattuner and brought his firm in to file the case
27 in the Northern District of Illinois. While in the Northern District of Illinois I
28 pursued discovery matters, attended Court, and face-to-face meetings with

1 Midland's counsel. As Plaintiff Scardina's interests were protected by Co-
2 counsel James Lattuner, except for discovery matters, I was not materially
3 involved in this case after the transfer to this Court via the MDL Order, until
4 it was time to review the various drafts of the settlement agreement and to
5 personally meet with Mr. Scardina multiple times to discuss the progress of
6 the case and go over the final terms of the settlement agreement. I declare
7 under penalty of perjury of the laws of Illinois and the United States that the
8 foregoing is true and correct, and that this declaration was executed in Park
9 Ridge, Illinois on March 21, 2016.

10
11 By: 

12
13 Curtis C. Warner

14 Warner Law Firm, LLC

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