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20 *Attorneys for Plaintiffs and the Proposed Class*

21 UNITED STATES DISTRICT COURT
22 FOR THE NORTHERN DISTRICT OF CALIFORNIA
23 OAKLAND DIVISION

24 ABANTE ROOTER AND PLUMBING,
25 INC., MARK HANKINS, and PHILIP J.
26 CHARVAT, individually and on behalf of all
27 others similarly situated,

Plaintiffs,

v.

ALARM.COM INCORPORATED, and
ALARM.COM HOLDINGS, INC.,

Defendants.

NO. 4:15-cv-06314-YGR

**DECLARATION OF JOHN W.
BARRETT IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS**

JURY TRIAL DEMAND

Complaint Filed: December 30, 2015

Honorable Yvonne Gonzalez Rogers

DATE: August 13, 2019

TIME: 2:00 p.m.

LOCATION: Oakland Courthouse
Courtroom 1 - 4th Floor

1 I, John W. Barrett, declare as follows:

2 1. I am submitting this affidavit in support of Plaintiff's Motion for Attorneys' Fees,
3 Costs, and Service Award. Except as otherwise noted, I have personal knowledge of the facts
4 set forth in this declaration, and could testify competently to them if called upon to do so.

5 2. TCPA cases can be very risky. Sometimes we lose cases early – for example,
6 when we lose on a motion to dismiss, or when we do extensive discovery only to find that there
7 is no solid evidence (call records) of calls to class members. But the risk is much greater when
8 the cases are more fully litigated through contested class certification and tried. That potential
9 that exists in every case we file.

10 3. We were prepared to litigate this case through trial and appeal, and came close to
11 reaching that point. Litigating TCPA cases to trial and appeal can be extremely expensive and
12 time-consuming, and carry a significant risk of loss, which we as class counsel bear in full. Were
13 we unwilling to bear that risk, TCPA class actions would not be brought.

14 4. I have firsthand experience with the risk and expense of trying TCPA class
15 actions. I was co-lead trial counsel in a certified TCPA class action against DISH Network.
16 *Krakauer v. DISH Network*, No. 1:14-cv-00333 (M.D. N.C.). The case was tried in January
17 2017, and the jury awarded \$20.5 million; the Court later trebled the award and entered judgment
18 for \$61.5 million. The case is on appeal to the Fourth Circuit. At the district court level, my firm
19 alone spent over 6,000 hours working on the case. When adding time spent by our co-counsel
20 and estimated time spent defending the judgment on appeal, the total number of hours is around
21 11,000, for a lodestar of more than \$6 million. We also have spent more than \$500,000 in
22 litigation costs. And we still have no assurance of payment, as the case is on appeal.

23 5. While our firms here did not put in this kind of effort, we were prepared to do so
24 if the defendant did not make a reasonable settlement offer. The fee we are requesting is intended
25 to compensate for the risk we assumed when we decided to litigate the case on behalf of the
26 class, and is sufficient to reward that risk and compensate for the beneficial service we as class
27 counsel provide to class members and the public generally when we step forward to fund and

1 prosecute these cases.

2 **Bailey & Glasser LLP's Experience and Qualifications**

3 6. I have practiced law for over 20 years. I received a B.A. from the University of
4 Pennsylvania in 1988, and my law degree from Boston University School of Law, *cum laude*, in
5 1996. From 1996 through 1998 I clerked for Charles H. Haden II, Chief Judge of the United
6 States District Court for the Southern District of West Virginia. I practiced with a two-lawyer
7 firm for three years, then as a sole practitioner for three years. I joined Bailey & Glasser LLP as
8 a partner in 2005.

9 7. Since then, we have grown from seven lawyers to 57 lawyers, with offices in
10 eight locations. I am the firm's President, with responsibility for managing the firm. I am also
11 responsible for overseeing our entire contingent-fee practice, which spans areas ranging from
12 product liability class actions such as the Toyota sudden acceleration and Volkswagen diesel
13 fraud multi-district litigations (where we serve in court-appointed leadership roles), to antitrust
14 cases, to ERISA breach of fiduciary duty cases, to consumer protection class actions, and to
15 Telephone Consumer Protection Act cases such as this one.

16 8. I have practiced in consumer class actions for more than 15 years, and more
17 specifically in TCPA class actions for approximately the last ten years.

18 9. I am AV rated by Martindale-Hubbell. I chair the Development Advisory Group
19 for Legal Aid of West Virginia; I am a member of the visiting committee of the West Virginia
20 University College of Law; and I am a member of the Board of Trustees of the University of
21 Charleston. In 2018, I was named a Fellow of the West Virginia State Bar Foundation, an honor
22 recognizing those lawyers in the state whose professional, public, and private careers have
23 demonstrated outstanding dedication to the welfare of their communities and honorable service
24 to the legal profession.

25 10. My class, mass, and consumer protection cases include:
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27

- 1 • *Krakauer v. DISH Network, LLC*, No. 14-333 (M.D.N.C.) (co-lead trial counsel,
2 lead appellate counsel; after jury trial in the nation’s first successful class action
3 trial alleging violations of the TCPA’s do-not-call provisions, received \$20.5
4 million jury verdict for 18,000 class members, later trebled to \$61.5 million; final
5 judgment, now on appeal).
- 6 • *In re Monitronics TCPA Litig.*, 1:13-mdl-02493 (N.D. W. Va.) (court-appointed
7 co-lead counsel in MDL; \$28 million TCPA class action settlement; finally
8 approved).
- 9 • *Mey v. Frontier Communications Corporation*, Civil Action No. 3:13-1191 (D.
10 Conn) (\$11 million TCPA class action settlement; finally approved).
- 11 • *Mey v. Patriot Payment Group, LLC, et al.*, Civil Action No. 5:15-cv-00027 (N.D.
12 W.Va.) (\$3.7 million TCPA class action settlement; finally approved).
- 13 • *Mey v. Venture Data, LLC et al.*, Civil Action No. 5:14-CV-123 (N.D. W. Va.)
14 (\$2.1 million TCPA class action settlement; finally approved).
- 15 • *Generic Drug Litigation (State of West Va. v. Rite Aid of West Va.*, Civil Action
16 No. 09-C-27; and *State of West Va. v. CVS Pharmacy, Inc.*, Civil Action No.
17 09-C-226 (Circuit Court of Boone County, West Virginia) (serving as Special
18 Assistant Attorney General, won settlements of more than \$10 million in *parens
19 patriae* consumer protection litigation).
- 20 • *Carter v. Forjas Taurus SA et al.*, Civil Action No. 1:13-CV-24583 (S.D. Fla.)
21 (class counsel for unprecedented product liability class action against Brazilian
22 pistol manufacturer; settlement provides for the free exchange of defective pistols
23 for new, nondefective pistols (unlimited by any claims period), or cash payments
24 of up to \$30 million for returned pistols; total value of settlement \$240 million;
25 finally approved).
- 26 • *Dijkstra v. Carenbauer*, Civil Action No. 5:11-cv-00152 (N.D. W. Va.) (court
27 awarded class more than \$2.6 million after granting affirmative summary
judgment in mortgage loan case alleging violations of the West Virginia
Consumer Credit and Protection Act).
- *Desai v. ADT Security*, Civil Action No. 11-C-1925 (N.D. Ill.) (\$15 million TCPA
settlement for nationwide class; finally approved).
- *Dunlap v. Wells Fargo*, Civil Action No. 04-C-101 (Circuit Court of Lincoln
County, West Virginia) (consumer class action resulting in \$9 million settlement,
not including interest rate reductions and credit repair provided as part of the
settlement; finally approved).

- 1 • *Mey v. Herbalife International, Inc.*, Civil Action No. 01-C-263 (Circuit Court of
2 Ohio County, West Virginia) (\$7 million nationwide class action settlement
alleging violations of the TCPA; finally approved).
- 3 • *Shonk v. SG Sales Co.*, Civil Action No. 07-C-1800 (Circuit Court of Kanawha
4 County, West Virginia) (\$2.45 million nationwide settlement of TCPA class
action; finally approved).
- 5 • *Brooks v. City of Huntington*, Civil Action No. 11-C-125 (Circuit Court of Wayne
6 County, West Virginia) (lead trial counsel 2011 jury trial for 40 Huntington
7 residents whose homes and properties were flooded by a municipal stormwater
control system; total recovery exceeded \$1 million).
- 8 • *Ooten v. Massey Coal*, Civil Action No. 02-C-203 (Circuit Court of Mingo
9 County, West Virginia) (trial counsel in two-phase, six-week jury trial alleging
10 mining company damaged the groundwater supplies of coalfield residents; total
cash recovery was \$3.2 million, plus injunctive relief).
- 11 • *Cummins v. H & R Block, Inc.*, Civil Action No. 03-C-134 (Circuit Court of
12 Kanawha County, West Virginia) (consumer class action resulting in \$62.5
million multistate settlement, including \$32.5 million for West Virginia
13 consumers; finally approved).
- 14 • *State of West Va. ex rel. Darrell V. McGraw v. Microsoft Corporation*, Civil
15 Action No. 01-C-197 (Circuit Court of Boone County, West Virginia) (*parens*
patriae antitrust and consumer protection action; settlement valued at more than
16 \$20 million; finally approved).
- 17 • *Anderson v. Provident Bank*, Civil Action No. 04-C-199 (Circuit Court of Mercer
18 County, West Virginia) (predatory mortgage lending class action settled for \$8.1
million on behalf of 140 class members; finally approved).
- 19 • *Hardwick v. Rent-A-Center, Inc.*, Civil Action No. 3:06-0901 (S.D. W. Va.) (class
20 action settlement worth more than \$5 million; alleging violations of state
Consumer Goods Rental Protection Act; finally approved).
- 21 • *Dillon v. Chase Bank*, Civil Action No. 03-C-164 (Circuit Court of Hancock
22 County, West Virginia) (\$3.3 million class action settlement for West Virginia
borrowers who alleged illegal loan-servicing claims; finally approved).
- 23 • *Casto v. City National Bank*, Civil Action No. 10-C-1089 (Circuit Court of
24 Kanawha County, West Virginia) (settlement of overdraft fee class action brought
under West Virginia consumer protection statute; settlement valued at \$5.5
25 million; finally approved).
- 26
- 27

- 1 • *Triplett v. NationStar Mortgage*, Civil Action No. 3:11cv238 (S.D. W. Va.) (\$1.5 million loan servicing class action settlement for West Virginia class under state consumer protection statute; finally approved).
- 2
- 3 • *Muhammad v. National City Mortgage Co.*, Civil Action No. 207-0423 (S.D. W. Va.) (\$700,000 mortgage loan servicing settlement alleging violations of the West Virginia Consumer Credit and Protection Act; finally approved).
- 4

5 11. I am the lead attorney from Bailey & Glasser in this case.

6 12. Plaintiffs' counsel are experienced class action practitioners with particular
7 expertise in the area of TCPA cases. We pursued this case vigorously, and were ready, willing,
8 and able to try the case and defend any verdict through judgment and appeal.

9 **Attorneys' Fees**

10 13. Class Counsel have received no payment for their fees and costs. Since beginning
11 work on this case in December of 2015, my firm worked with no guarantee of being
12 compensated for its time and efforts. Payment of my firm's fees has always been contingent on
13 successfully obtaining relief for the Plaintiffs and class members. As a result, there was a
14 substantial risk of non-payment, particularly in light of the legal challenges involved in
15 litigating this case. Work on this case has necessarily been to the exclusion of work on other
16 matters that likely would have generated fees. My firm has also been denied use of the fees it
17 earned over the course of this case.

18 14. I have reviewed my firm's billing records and reduced and eliminated time where
19 appropriate. I eliminated time that was administrative in nature, and made reductions where
20 time arguably could have been more efficiently spent.

21 15. We have not included any time spent preparing this motion in my lodestar. The
22 lodestar also does not include the work we will do after completion of this motion, which will
23 include working with the settlement administrator, preparing the motion for final approval and
24 attending the hearing, and communicating with class members.

25 16. Bailey & Glasser spent 513.4 hours on this file, for a total lodestar of
26 \$264,747.00. The following table identifies the attorneys and staff members from Bailey &
27 Glasser who worked on this case and for whom the recovery of fees is sought. For each of the

1 timekeepers below, I have stated the current hourly rate, the number of hours billed after the
 2 reductions discussed below, and the total amount of fees. These are the rates we sought in the
 3 DISH Network case when we submitted our fee petition there, which the Court granted in full.

	RATE	HOURS	TOTAL
John W. Barrett Partner	\$700	188.8	\$132,160.00
Brian A. Glasser Partner	\$750	32.8	\$24,600.00
Elizabeth A. Ryan Partner	\$760	17.3	\$13,148.00
Ryan M. Donovan Associate	\$490	77.1	\$37,779.00
Raymond S. Franks, II Associate	\$600	26.9	\$16,140.00
Denise L. Milhoan Paralegal	\$240	71.5	\$17,160.00
Christy A. Robinson Paralegal	\$240	99	\$23,760.00
		513.4	\$264,747.00

17 17. Bailey & Glasser sets its rates for attorneys and staff members based on a variety
 18 of factors, including among others: the experience, skill and sophistication required for the
 19 types of legal services typically performed; the rates customarily charged in similar matters; the
 20 rates customarily charged by other lawyers of similar skill and experience; and the experience,
 21 reputation, and ability of the attorneys and staff members. We set our rates to be consistent with
 22 the prevailing market rates in the private sector for attorneys and staff of comparable skill,
 23 qualifications and experience who litigate class actions and complex litigation.

Costs

18. Through the date of this submission, my firm has incurred \$80,378.37 in unreimbursed litigation costs in prosecuting this case. These costs are summarized in the Declaration of Beth E. Terrell.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States of America.

Executed this 18th day of March, 2019, in Charleston, West Virginia.

/s/ John W. Barrett, Admitted Pro Hac Vice
John W. Barrett, Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

1
2 I, Beth E. Terrell, hereby certify that on March 18, 2019, I electronically filed the
3 foregoing with the Clerk of the Court using the CM/ECF system which will send notification of
4 such filing to the following:

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Attorneys for Defendants Alarm.com Incorporated and Alarm.com Holdings, Inc.

DATED this 18th day of March, 2019.

TERRELL MARSHALL LAW GROUP PLLC

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Attorneys for Plaintiffs

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