UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARIA VERGARA, SANDEEP PAL, JENNIFER REILLY, JUSTIN BARTOLET, JAMES LATHROP, and JONATHAN GRINDELL, individually and on behalf of similarly situated individuals,	))))))	
Plaintiffs,	))	No. 15-cv-06942
v.	))	Hon. Thomas M. Durkin
UBER TECHNOLOGIES, INC., a Delaware corporation,	))))	
Defendant.	))	

DECLARATION OF HASSAN A. ZAVAREEI
IN SUPPORT OF PLAINTIFFS' *UNOPPOSED* MOTION FOR
APPROVAL OF ATTORNEY FEES, EXPENSES, AND INCENTIVE AWARDS

I, HASSAN A. ZAVAREEI, ESQ., hereby declare and state as follows:

1. I am competent to testify to the matters stated herein. I submit this declaration in support of Plaintiffs' Unopposed Motion for Approval of Attorney Fees, Expenses, and Incentive Awards.

2. I am a partner at the firm Tycko & Zavareei LLP ("TZ") and a member in good standing of the District of Columbia, Maryland and California bars. Over the past twenty-one years, I have gained substantial experience handling complex civil litigation and class action litigation. I have taken several cases to trial, including jury trials that have lasted several months. I have argued appeals in the D.C. Circuit, the Fourth Circuit and the Fifth Circuit. I am a graduate of Boalt Hall Law School at the University of California, Berkeley. I have been appointed as Class Counsel in numerous class actions.

3. TZ has devoted the time and resources of its attorneys and staff to ensure the vigorous investigation, litigation, and resolution of the claims brought on behalf of the Settlement Classes in this litigation. We will continue to dedicate the time and resources necessary to effectuate the settlement and to advocate on behalf of Settlement Class members.

1

4.   The Parties have vigorously litigated and have thoroughly explored the issues in this litigation.

5.   This case was handled by me and two other attorneys at TZ—my partner Andrea Gold and my associate Andrew Silver—with additional assistance from other attorneys and staff. We spent significant time communicating with the Plaintiffs, investigating facts, researching the law, preparing a well-pleaded complaint and amended complaints, engaging in discovery, working with expert witnesses, briefing and arguing discovery disputes, preparing briefs for and appearing before the Judicial Panel on Multidistrict Litigation (JPML), reviewing documents, taking and defending numerous depositions, negotiating the Settlement, and supervising the notice and claims administration process.

6.   I have been named Class Counsel or Settlement Class Counsel in numerous class actions including *Shannon Schulte, et al. v. Fifth Third Bank.*, No. 1:09-cv-06655 (N.D. Ill.); *Kelly Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.); *Nick Allen, et al. v. UMB Bank, N.A.*, et al., No. 1016 Civ. 34791 (Cir. Ct. Jackson County, Mo.); *Thomas Casto, et al. v. City National Bank, N.A.,* 10 Civ. 01089 (Cir. Ct. Kanawha County, W. Va.); *Eaton v. Bank of Oklahoma, N.A., and BOK Financial Corporation, d/b/a Bank of Oklahoma, N.A.*, No. CJ-2010-5209 (Dist. Ct. for Tulsa County, Okla.); *Lodley and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.); *Jessica Duval, et al. v. Citizens Financial Group, Inc., et al*, No. 1:10-cv-21080 (S.D. Fla.); *Mascaro, et al. v. TD Bank, Inc.*, No. 10-cv-21117 (S.D. Fla.); *Theresa Molina, et al., v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick County, Kan.); and *Trombley v. National City Bank*, 1:10-cv-00232-JDB (D.D.C.); *Jonathan Jones, et al. v. United Bank and United Bankshares, Inc.*, No. 11-C-50 (Cir. Ct. of Jackson County, W. Va.); *Amber Hawthorne, et al. v. Umpqua Bank*, No. 4:11-cv-06700 (N.D. Cal.); *Sylvia Hawkins, et al. v. First Tennessee Bank, N.A.*, No. CT-004085-11 (Cir. Ct. of Shelby County, Tenn.); *Jane Simpson, et al. v. Citizens Bank*, et al., No. 2:12-cv-10267 (E.D. Mich.); *William Klopfenstein, et al. v. Fifth Third Bank*, No. 1:12-cv-00851 (S.D. Ohio); and *Alfonse Forgione, et al. v. Webster Bank, N.A.*, No. UWY-CV12-6015956-S (Super. Ct. Judicial Dist. of Waterbury, Conn.); *Sherry Bodnar v. Bank of America, N.A.*, No. 5:14-cv-03224-EGS (E.D. Pa.).

7.   Plaintiffs Jonathan Grindell, Jennifer Reilly, and James Lathrop filed suit against Uber alleging violations of the TCPA on December 31, 2014 in the United States District Court for the Northern District of California. Plaintiffs Sandeep Pal and Justin Bartolet joined the lawsuit on January 30, 2015. These Plaintiffs are all individuals who received unwanted text messages from Uber related to becoming a driver for Uber.

8.   From the outset of this litigation, the attorneys and staff of TZ anticipated spending hundreds, if not thousands (as has been the case), of hours litigating the claims in this matter with no guarantee of success. TZ attorneys understood that prosecution of this case would require that other work be foregone, that there was significant uncertainty

2

surrounding the applicable legal and factual issues, and that there would be significant opposition from a large defendant with substantial resources. It is far from clear whether Plaintiffs would have successfully obtained a favorable judgment on the merits. Given the financial resources at Defendant's disposal, any final decisions favorable to Plaintiffs would have likely been appealed.

9. In the California Litigation, Class Counsel defeated a motion to dismiss, defeated a motion to stay, engaged in extensive discovery efforts including the production and review of electronically-stored information ("ESI"), defeated a premature motion for summary judgment, and served two lengthy expert reports on hotly contested issues.

10. Uber moved to dismiss the claims of some of the Plaintiffs in the California Litigation on the ground that they provided prior express consent to receive the text messages at issue by including their cellular telephone number as part of an incomplete application. After full briefing, the court largely rejected this argument, and the case proceeded to discovery.

11. In May of 2015, Class Counsel in the California Litigation filed a preliminary motion for class certification. *Lathrop* Dkt. No. 42. Although the Court ultimately stayed briefing on that motion in light of the pending motion to dismiss and instructed Plaintiffs to re-notice the motion at a later appropriate time, Class Counsel went to great effort to prepare that motion at an early stage in the case.

12. In November of 2015, Uber moved to stay the California Litigation entirely pending both the Supreme Court's decision in *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540 (2016), and the D.C. Circuit's decision on the appeal related to the 2015 FCC Order. The motion was fully briefed, the court held a hearing on the motion (at which Counsel appeared and argued), and the motion was denied.

13. Class Counsel conducted significant discovery in the California Litigation. Class Counsel prepared and served initial disclosures, several sets of interrogatories, requests for admission, and ten sets of document requests; responded to discovery requests, including interrogatories and document requests to each named plaintiff; reviewed over 4,000 documents; met and conferred with defense counsel to resolve various discovery disputes; served third-party discovery; took numerous depositions (including a third-party deposition); and prepared Plaintiffs for deposition and defended those depositions.

14. Class Counsel also prevailed on several discovery disputes via the *Lathrop* court's letter briefing process, which extended over many months. Class Counsel filed five separate Joint Letter Briefs, *Lathrop* Dkt. Nos. 159, 160, 161, 204, 235, and were largely successful in those discovery disputes.

15.   Class Counsel's dogged pursuit of key discovery strengthened the case. For instance, Uber was ultimately forced, via Court order, to produce important discovery such as a sample of its text logs and additional information about its website screen flows.

16.   The claims in the case involved complex text message development and processing issues. Thus, a tremendous amount of work was necessary to determine how Uber's text messaging system worked and how the fatal flaws in its system resulted in Uber sending millions of unauthorized text messages.

17.   Class Counsel conducted three separate Rule 30(b)(6) depositions of Uber and deposed four additional Uber employee witnesses. Uber ultimately produced over 4,000 pages of documents related to its text messaging practices and responded to 16 interrogatories. Class Counsel also obtained documents from and deposed third-party Twilio, Inc., the primary mobile-messaging company used by Uber to send its text messages.

18.   The discovery process was key to this successful litigation and settlement. Among other things, information obtained during the discovery process revealed how Uber's text messaging ecosystem functions, traced the information contained in Uber's databases related to text messages sent to Settlement Class Members, uncovered the details of Uber's various web and Uber App portals for both initiating the process to become a driver and input information into Uber's Refer-a-Friend text messaging program, and informed the selection of witnesses.

19.   The discovery process also informed Plaintiffs' arguments as to class certification and Plaintiffs' strategy during settlement negotiations, which were critical to achieving this Settlement.

20.   In April of 2016, while the parties were in the midst of fact discovery and before any expert discovery had been conducted, Uber filed a summary judgment motion. Class Counsel successfully opposed that motion.

21.   Class Counsel consulted with expert witnesses, retaining experts on Uber's alleged automated telephone dialing system (ATDS) and its text message logs. Class Counsel served lengthy and technical expert reports on Uber on February 15, 2017, with experts Randall Snyder and Arthur Olsen providing detailed and thorough testimony.

22.   In total, Class Counsel appeared and argued at eight hearings and/or conferences in the California Litigation.

23.   The parties reopened the topic of potential settlement prior to scheduled depositions of Plaintiffs' experts. The parties agreed to mediate the case as part of a global mediation including this case, *Vergara v. Uber Technologies, Inc*. My firm was also co-counsel in *Vergara*. On March 1, 2017, the parties filed a stipulation to modify the case schedule in

the California Litigation, postponing certain deadlines (including upcoming class certification briefing) until after mediation.

24. On March 7, 2017, the *Lathrop* court entered an order approving the parties' stipulation.

25. On May 23, 2017, the Parties' counsel attended a full-day mediation in California with the Hon. Layn R. Phillips (Ret.) of Phillips ADR, a former U.S. District Court Judge with expertise in complex litigation.

26. By the time of the mediation, Class Counsel was fully informed of the merits, having engaged in extensive discovery and motion practice for years. Class Counsel prepared a lengthy mediation statement. Class Counsel zealously advocated the position of Plaintiffs and class members. Class Counsel was fully prepared to continue to litigate rather than accept a settlement that was not in the best interest of Plaintiffs and class members.

27. The Parties reached a settlement in principle following a full day of contentious mediation extending into the evening.

28. Following the mediation, Class Counsel participated in several follow-up conferences with Judge Phillips and opposing counsel.

29. Class Counsel negotiated the details of a comprehensive Settlement Agreement over a period of months, engaging in significant edits and revisions to the same. The final Settlement Agreement was fully executed on August 4, 2017.

30. That Settlement Agreement provides both monetary compensation and meaningful injunctive relief, while avoiding the risks and delay of further litigation. Working with opposing counsel, Class Counsel prepared the Notices for the Settlement Classes, a proposed Preliminary Approval Order, and a proposed Final Approval Order.

31. Class Counsel also prepared the First Amended Class Action Complaint (Dkt. 82) and the motion for preliminary approval of the Settlement (Dkt. 85). Class Counsel participated in the hearing on the motion for preliminary approval on August 16, 2017, with the Court granting preliminary approval of the Settlement the following day. Dkt. 88.

32. Class Counsel has continued to invest significant time and effort in this action following preliminary approval. The Parties selected Epiq Systems Class Action and Claims Solutions ("Epiq") as Settlement Administrator, and Class Counsel has been actively involved in supervising and managing all aspects of Epiq's administration of the notice program and claims process.

33. Class Counsel has regularly communicated with the Settlement Administrator to ensure a smooth notice process following preliminary approval. To that end, Class Counsel has

reviewed the language and content of the settlement website, reviewed and edited scripts for the automated telephone hotline, responded to Class Members who contacted Class Counsel directly, communicated with the named Plaintiffs regarding the notice and claims process, communicated with opposing counsel regarding notice issues, and prepared the present motion.

34.   Class Counsel will continue to devote their time and effort as the claims process continues, as well as appear at the final approval hearing, respond to ongoing inquiries from Settlement Class Members, and monitor the distribution of settlement payments by the Settlement Administrator.

35.   TZ spent 3929.05 hours on this case to date for a total lodestar of $2,308,169.70.

36.   TZ also incurred $177,885.94 in unreimbursed case-related expenses, including expenses related to filing, appearances, discovery, subpoenas, experts, mediation, travel, copying, case administration, postage, delivery services, computerized legal research, and transcripts. Expenses are accounted for and billed separately and are not duplicated in my firm's professional billing rate. TZ has not received reimbursement for expenses incurred in connection with this litigation. The actual expenses incurred in the prosecution of this case is reflected on the computerized accounting records of my firm prepared by bookkeeping staff, based on receipts and check records, and accurately reflect all actual expenses incurred. These expenses were necessary to prosecuting litigation of this size and complexity on behalf of the Settlement Classes, and they are typical of expenses regularly awarded in large-scale class actions. Indeed, because TZ was responsible for advancing all expenses incurred, TZ had a strong incentive not to spend any funds unnecessarily.

37.   The chart at the top of the following page summarizes the work performed by each attorney and staff member at TZ, along with the hourly rate charged, total hours worked, and individual lodestar amount, along with the total lodestar and expense figures discussed above.[1] The chart was prepared from contemporaneous detailed daily time records regularly prepared and maintained by TZ— which are available at the request of the Court —utilizing timekeeping software to which all employees have access. In my opinion, the time spent by attorneys and staff of TZ was reasonable and necessary. Indeed, by prosecuting this case purely on a contingency basis and not being paid by the hour, TZ attorneys and staff worked efficiently and avoided unnecessary work.

---

[1] TZ will update its lodestar and costs in a reply declaration, as necessary.

Staff Name	Position	Rate	Total Hours	Individual Lodestar
Vergara, et al. v. Uber Lodestar Summary				
Tycko & Zavareei LLP				
H. Zavareei	Partner	$864.00	694.10	$599,702.40
K. Sagafi	Partner	$717.00	52.50	$37,642.50
M. Quinones	Associate	$359.00	27.90	$10,016.10
A. Gold	Partner	$717.00	1392.90	$998,709.30
A. Silver	Associate	$440.00	1187.80	$522,632.00
L. Kelleher	Fellow	$359.00	54.50	$19,565.50
E. Finley	Fellow	$359.00	73.00	$26,207.00
S. Goren	Associate	$359.00	38.10	$13,677.90
A. Berkowitz	Paralegal	$196.00	34.00	$6,664.00
C. Parel	Paralegal	$196.00	2.70	$529.20
S. Teng	Paralegal	$196.00	139.70	$27,381.20
N. Fletcher	Paralegal	$196.00	7.20	$1,411.20
N. Laporte	Paralegal	$196.00	137.00	$26,852.00
A. Abate	Paralegal	$196.00	87.65	$17,179.40
		Total:	3929.05	$2,308,169.70
		Expenses:		$177,885.94
	Total Lodestar and Expenses:			$2,486,055.64

38.   I believe that TZ assumed a significant risk of non-payment in initiating and prosecuting this case given the novelty of many of the legal issues involved, the breadth of Uber's SMS practices, the complex dialing system at issue, and the defenses that Uber and its counsel raised throughout the litigation and were prepared to further raise had this case not been resolved. My colleagues and I would not have brought this case absent the prospect of obtaining a percentage of the fund or a multiplier on our actual attorneys' fees to account for the risk associated with this type of complex class action.

39.   I anticipate that my firm will expend additional time and effort through final approval to respond to inquiries from Settlement Class Members, respond to any potential objectors, prepare final approval papers, review claims, and advocate on behalf of the Settlement Class Members in the event a claim is wrongfully denied. I conservatively estimate that the lodestar for these additional efforts by TZ will be approximately $50,000–$100,000.

40.   Based on the number of claims filed to date, Plaintiffs anticipate a payment per Settlement Class Member between $120 and $200, which is well within the range of previously approved TCPA settlements.

41.   Although the individual pro rata payments that will be made to Settlement Class Members who submit valid claims will ultimately depend on the number of claims filed, the monetary relief will still be fair and reasonable, and at least in the range of the other similar settlements. Taking the current claims of approximately 62,000 class members, the per class member distribution would amount to about $201. Assuming another 40,000 Class Members make claims (which is a very aggressive assumption), the payout to Class Members would still amount to over $120.

42.   To date, the Settlement has received a high level of participation by the Settlement Class Members, with tens of thousands of claims having been filed. Over 62,000 claims have already been filed and only seven individuals have elected to opt out of the Settlement. As of the date of filing Plaintiffs' Motion, no objections have been filed.

43.   My firm's retention agreement with the Plaintiffs in the California Litigation provides for a contingency fee of 33% in the event of an individual settlement.

44.   TZ's rates are comparable to those charged by attorneys with similar backgrounds and experience, and are commensurate with judicially approved rates in class actions in the Northern District of Illinois and the Northern District of California (where *Lathrop* was pending).

45.   The hourly rates shown for the attorneys at Tycko & Zavareei are our 2017 rates charged as delineated by the Adjusted Laffey Matrix (http://www.laffeymatrix.com/), which provides market rates for attorneys working in the Washington, D.C., and Baltimore areas. Although the Adjusted Laffey Matrix is updated annually, courts have awarded attorneys' fees consistent with the Adjusted Laffey Matrix to my firm in a number of cases, including in the Northern District of California, the court in which my firm litigated the *Lathrop* action. *See, e.g.*, *Kumar v. Salov North America Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898 (N.D. Cal. July 7, 2017); *Brown v. Transurban USA, Inc.*, No. 1:15CV494 (JCC/MSN), 2016 WL 6909683 (E.D. Va. Sept. 29, 2016); *Small v. BOKF, N.A.*, No. 1:13-cv-01125-REB-MJW (D. Colo.); *Soule v. Hilton Worldwide, Inc.*, No. CV 13-00652 ACK-RLP, 2015 WL 12827769 (D. Haw. Aug. 25, 2015); *Beck v. Test Masters Educ. Servs., Inc.*, 73 F. Supp. 3d 12 (D.D.C. 2014); *see also Mancini v. Dan P. Plute, Inc.*, 358 F. App'x 886 (9th Cir. 2009) (accepting Adjusted Laffey Matrix as evidence of reasonable hourly rates charged by Washington, D.C. attorneys).

46.   I am a 1995 graduate of University of California, Berkeley School of Law. Andrea Gold is a partner at TZ and a 2004 graduate of University of Michigan Law School, and Andrew Silver is an associate at TZ and a 2012 graduate of Boston College Law School. Ms. Gold and Mr. Silver have extensive experience in complex class action litigation and have regularly litigated cases in state and federal courts across the nation. The other attorneys at TZ to work on this case, as summarized in the preceding lodestar chart, were TZ partner Kristen Sagafi (a 2002 graduate of University of California, Berkeley School of Law), TZ

associate Martin Quinones (a 2013 graduate of University of California, Berkeley School of Law), TZ fellow Eliza Finley (a 2014 graduate of Harvard Law School), TZ associate Sophia Goren (a 2015 graduate of University of California, Berkeley School of Law), and TZ fellow Lauren Kelleher (a 2016 graduate of Georgetown University Law Center). The hourly rates charged for all of the attorneys discussed herein are commensurate with the rates set forth in the Adjusted Laffey Matrix.

47.   I was previously an attorney at the law firm of Gibson Dunn & Crutcher. It is my understanding that attorneys at that firm in the litigation department with the same number of years of experience as myself are currently billing at hourly rates in excess of $1,000 for law school graduates from 1995. I believe that my firm's hourly rates are at or below market for attorneys with similar backgrounds and experience.

48.   Each Plaintiff in the California Litigation has worked alongside Class Counsel and remained actively engaged through every stage of the California litigation. The Plaintiffs in the California Litigation assisted with the initial investigation of their claims, reviewed the complaint and other filings, consulted with Class Counsel on numerous occasions and providing Class Counsel with the information needed to pursue their and the Settlement Class Members' claims, and responding to requests for additional information throughout the settlement process.

49.   Each of the Plaintiffs in the California Litigation responded to written discovery from Uber.

50.   Plaintiffs Lathrop, Bartolet, Grindell and Reilly sat for depositions, and each Plaintiff was prepared to testify in court in the event the cases proceeded to trial.

51.   Although no award of any sort was promised to the Plaintiffs in the California Litigation prior to or during the litigation, the Plaintiffs in the California Litigation nonetheless contributed their time and effort in pursuing their own TCPA claims and serving as representatives on behalf of the Settlement Class Members—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 15, 2017.

/s/ Hassan A. Zavareei
Hassan A. Zavareei