

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ABANTE ROOTER AND PLUMBING,
INC., individually and on behalf of all others
similarly situated,

Plaintiff,

v.

NEW YORK LIFE INSURANCE
COMPANY

Defendant.

NO. 1:16-cv-03588

**DECLARATION MATTHEW P. MCCUE IN SUPPORT OF PLAINTIFF'S
MOTION FOR SERVICE AWARD, ATTORNEYS' FEES, AND COSTS**

1. I make this affidavit in support of the Plaintiff's Motion for Service Award, Attorneys' Fees and Costs.
2. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, I am over 18 years of age, am competent to testify and make this affidavit on personal knowledge. I am in good standing in every court to which I am admitted to practice.

Qualification of Counsel

3. I am a 1993 honors graduate of Suffolk Law School in Boston, Massachusetts. Following graduation from law school, I served as a law clerk to the Justices of the Massachusetts Superior Court. I then served a second year as a law clerk for the Hon. F. Owen Eagan, United States Magistrate Judge for the USDC District of Connecticut.
4. In 1994, I was admitted to the Bar in Massachusetts. Since then, I have been admitted to practice before the United States District Court for the District of

Massachusetts, the First Circuit Court of Appeals, the United States District Court for the District of Colorado and the Sixth Circuit Court of Appeals.

5. Following my clerkships, I was employed as a litigation associate with the Boston law firm of Hanify & King. In 1997, I joined the law firm of Mirick O'Connell as a litigation associate where I focused my trial and appellate practice on plaintiff's personal injury and consumer protection law.

6. In the summer of 2002, I was recognized by the legal publication Massachusetts Lawyers Weekly as one of five "Up and Coming Attorneys" for my work on behalf of consumers and accident victims.

7. In November of 2004, I started my own law firm focusing exclusively on the litigation consumer class actions and serious personal injury cases.

8. I am in good standing in every court to which I am admitted to practice.

9. A sampling of other class actions in which I have represented classes of consumers and been appointed class counsel follows:

10. A sampling of other class actions in which I have participated regarding classes of consumers follows:

- i. Mey v. Herbalife International, Inc., Ohio County Circuit Court (West Virginia), Civil Action No. 01-cv-263. \$7,000,000 TCPA class action settlement granted final approval on February 5, 2008 following the granting of a contested class certification motion.
- ii. Mulhern v. MacLeod d/b/a ABC Mortgage Company, Norfolk Superior Court (Massachusetts), Civil Action No. 05-01619-BLS. TCPA class

settlement of \$475,000 following the granting of a contested class certification motion, granted final approval by the Court on July 25, 2007.

- iii. Evan Fray-Witzer, v. Metropolitan Antiques, LLC, Suffolk Superior Court (Massachusetts), Civil Action No. 02-5827-BLS. After the granting of a contested class certification motion, a companion case went to the Massachusetts Supreme Judicial Court, which issued a decision finding insurance coverage. *See Terra Nova Insurance v. Fray-Witzer et. al.*, 449 Mass. 206 (2007). There was then a TCPA class settlement of \$1,800,000 which was granted final approval.
- iv. Shonk Land Company, LLC v. SG Sales Company, Circuit Court of Kanawha County (West Virginia), Civil Action No. 07-C-1800 TCPA class settlement for \$2,450,000, final approval granted in September of 2009.
- v. Mann & Company, P.C. v. C-Tech Industries, Inc., USDC, D. Mass., Civil Action No. 1:08-CV-11312-RGS, TCPA class settlement of \$1,000,000, final approval granted in January of 2010.
- vi. Evan Fray Witzer v. Olde Stone Land Survey Company, Inc., Suffolk Superior Court (Massachusetts), Civil Action No. 08-04165. TCPA class settlement \$1,300,000 granted final approval on February 3, 2011.
- vii. Milford & Ford Associates, Inc. and D. Michael Collins vs. Cell-Tek, LLC, USDC, D. Mass., Civil Action No. 1:09-cv-11261-DPW. TCPA class settlement of \$1,800,000, final approval granted August 17, 2011.
- viii. Collins v. Locks & Keys of Woburn, Inc., Suffolk Superior Court

- (Massachusetts), Civil Action No. 07-4207-BLS2, TCPA class settlement of \$2,000,000 following the granting of a contested class certification motion, granted final approval on December 14, 2011.
- ix. Brey Corp t/a Hobby Works v. Life Time Pavers, Inc., Circuit Court for Montgomery County (Maryland), Civil Action No. 349410-V, TCPA class settlement of \$1,575,000 granted final approval in March of 2012.
- x. Collins, et al v. ACS, Inc. et al, USDC, D. Mass., Civil Action No. 10-CV-11912, TCPA class settlement \$1,875,000 granted final approval on September 25, 2012.
- xi. Desai and Charvat v. ADT Security Services, Inc., USDC, ND. Ill., Civil Action No. 11-CV-1925, TCPA class settlement of \$15,000,000 granted final approval on June 21, 2013.
- xii. Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC, USDC, D. MD, Civil Action No. 11-CV-02467, TCPA class settlement of \$4,500,000 granted final approval on February 12, 2015.
- xiii. Benzion v. Vivint, Inc., USDC, SDFL, Civil Action No. 0:12-cv-61821-WJZ, TCPA class settlement of \$6,000,000 granted final approval on February 23, 2015.
- xiv. Jay Clogg Realty Group, Inc. v. Burger King Corporation, USDC, D. MD., Civil Action No. 13-cv-00662, TCPA class settlement of \$8,500,000 granted final approval on April 15, 2015.
- xv. Charvat v. AEP Energy, Inc., USDC, ND. Ill., 1:14-cv-03121, TCPA class settlement of \$6,000,000 granted final approval on September 28, 2015.

- xvi. Mey v. Interstate National Dealer Services, Inc., USDC, ND. Ga., 1:14-cv-01846-ELR, TCPA class settlement of \$4,200,000 granted final approval on June 8, 2016.
- xvii. Philip Charvat and Ken Johansen v. National Guardian Life Insurance Company, USDC, WD. Wi., 15-cv-43-JDP, TCPA class settlement for \$1,500,000 granted final approval on August 4, 2016.
- xviii. Bull v. US Coachways, Inc., USDC, ND. Ill., 1:14-cv-05789, TCPA class settlement finally approved on November 11, 2016 with an agreement for judgment in the amount of \$49,932,375 and an assignment of rights against defendant's insurance carrier.
- xix. Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC, et al., USDC, ND. Ill., 1:13-cv-00042, TCPA class settlement of \$2,150,000 was granted final approval on December 1, 2016 with one of three defendants, and an assignment of rights against defendant's insurance carrier. The case continues against the two non-settling defendants.
- xx. Smith v. State Farm Mut. Auto. Ins. Co. , et. al., USDC, ND. Ill., 1:13-cv-02018, TCPA class settlement of \$7,000,000.00 granted final approval on December 8, 2016.
- xxi. Mey v. Frontier Communications Corporation, USDC, D. Ct., 3:13-cv-1191-MPS, a TCPA class settlement of \$11,000,000 granted final approval on June 2, 2017.
- xxii. Mey v. Got Warranty, Inc., et. al., USDC, ND. WV., 5:15-cv-00101-JPB-JES, a TCPA class settlement of \$650,000 granted preliminary approval

on April 6, 2017.

- xxiii. Mey v. Patriot Payment Group, LLC, USDC, ND. WV., 5:15-cv-00027-
JPB-JES, a TCPA class settlement of \$3,700,000 granted preliminary
approval on April 6, 2017.
- xxiv. Biringer v. First Family Insurance, Inc., USDC, ND. Fla., a TCPA class
settlement of \$2,900,000 granted final approval on April 24, 2017.
- xxv. Abramson v. Alpha Gas and Electric, LLC, USDC, SD. NY., 7:15-cv-
05299-KMK, a TCPA class settlement of \$1,100,000 granted final
approval on May 3, 2017.
- xxvi. Heidarpour v. Central Payment Co., USDC, MD. Ga., 16-cv-01215, a
TCPA class settlement of \$6,500,000 granted final approval on May 4,
2017.
- xxvii. Abante Rooter and Plumbing, Inc. v. New York Life Insurance Company,
USDC, SD. NY., 1:16-cv-03588-BCM, a TCPA class settlement of
\$3,250,000 granted preliminary approval on May 18, 2017.
- xxviii. Abramson v. CWS Apartment Home, LLC, USDC, WD. Tex., 16-cv-
01215, a TCPA class settlement of \$368,000.00 granted final approval on
May 19, 2017.
- xxix. Thomas Krakauer v. Dish Network, L.L.C., USDC, MD. NC., Civil
Action No. 1:14-CV-333. Following a contested class certification motion
(granted on September 9, 2015), this case went to trial in January of 2017
returning a verdict of \$20,446,400. On May 22, 2017, this amount was
trebled by the Court after finding that Dish Network's violations were

“willful or knowing”, for a revised damages award of \$61,339,200. (Dkt. No. 338).

xxx. Abante Rooter and Plumbing, Inc. v. Alarm.com Incorporated and Alrm.com Holdings, Inc., USDC, NDCA, 4:15-cv-06314. Class certification in TCPA case granted on June 5, 2017.

xxxi. Mey v. Venture Data, LLC and Public Opinion Strategies, USDC, NDWV, 5:14-cv-123. Class certification in TCPA case granted on June 6, 2017.

Background and Circumstances Surrounding the Fee Application

11. Class Counsel are experienced class action litigators and have litigated and settled dozens of cases, including TCPA cases.

12. Class Counsel undertook representation of this matter on a pure contingency-fee basis, agreeing to advance all necessary expenses and to receive a fee only if there was a recovery. As a result, they shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment, all while devoting time to this case that otherwise could have been spent on other matters.

13. Class Counsel undertook substantial risk in this litigation.

Class Counsel Costs

14. My firm has incurred \$4,013, including an estimate of what will be incurred through the final approval hearing. This amount is comprised principally of

general litigation expenses including travel to mediation and hearings.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY THIS 19th DAY OF
JUNE, 2017.

/s/ Matthew P. McCue
Matthew P. McCue