

**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 OF KIM E. RICHMAN IN SUPPORT OF PLAINTIFF'S
MOTION FOR SERVICE AWARD, ATTORNEYS' FEES, AND COSTS**

1. I make this affidavit in support of Plaintiff's Motion for Service Award, Attorneys' Fees, and Costs.

2. I am over the age of 18, and the matters stated herein are based on my personal knowledge, except as otherwise noted. If called upon, I would competently testify to them.

Qualification of Counsel

3. I am the founding and managing member of the Richman Law Group, a law firm that specializes in class action litigation on behalf of consumers in federal and state courts throughout the United States.

4. I received my *juris doctor* degree from Brooklyn Law School in 2001. I am a member in good standing of the state bar of New York, to which I was admitted in 2003, as well as numerous federal courts, including but not limited to the United States District Courts for the Southern and Eastern Districts of New York. I have appeared in various state and federal district courts *pro hac vice*.

5. I have been litigating class actions on behalf of consumers for over a decade, including claims under the Telephone Consumer Protection Act, 47 U.S.C. §227 ("TCPA"), and

various state and federal consumer-protection statutes. My litigation experience ranges from cases involving corporate fraud and insider trading to protecting individuals' constitutional and fair-use rights. I have been appointed by the courts to represent consumers in numerous actions.

6. Following is a partial list of cases that I have previously litigated or am currently litigating on behalf of consumers:

- i. *Chin v. RCN Corp.*, No. 08-CV-7349 RJS (S.D.N.Y.) (class action alleging violation of Virginia consumer protection law);
- ii. *Gaines v. Home Loan Center, Inc.*, No. 08-CV-667 DOC (C.D. Cal) (class action alleging violation of the Racketeer Influenced and Corrupt Organizations Act);
- iii. *Bodoin v. Impeccable L.L.C.*, No. 601801/08 (N.Y. Sup. Ct.) (individual action alleging conspiracy and fraud);
- iv. *Tan v. Comcast Corp.*, No. 08-CV-02735 (E.D. Pa.) (class action alleging violation of the federal Computer Fraud and Abuse Act (CFAA));
- v. *All-Star Carts & Vehicles Inc. v. BFI Canada Income Fund*, No. 08-CV-1816 (E.D.N.Y.) (class action alleging violation of the Sherman Antitrust Act);
- vi. *Fink v. Time Warner Cable*, No. 08-CV-9628 (S.D.N.Y.) (class action alleging violation of New York consumer protection laws);
- vii. *S.K. v. General Nutrition Corp.*, No. 08-CV-9263 (S.D.N.Y.) (class action alleging violation of New York consumer protection laws);
- viii. *Petlack v. S.C. Johnson & Son, Inc.*, No. 08-CV-00820 (E.D. Wisconsin) (class action alleging violation of Wisconsin consumer protection law);
- ix. *Serrano v. Cablevision Systems Corp.*, No. 09-CV-1056 (E.D.N.Y.) (class action alleging violation of CFAA and of New York consumer protection law);

- x. *Hill v. Roll International Corp.*, No. CGC-09-487547 (San Francisco County Superior Court) (class action alleging violation of California consumer protection laws);
- xi. *L'Ottavo Ristorante v. Ingomar Packing Co.*, No. 09-CV-01427 (E.D. Cal.) (class action alleging violation of the Sherman Act);
- xii. *Koh v. SC Johnson & Son, Inc.*, No. 5:09-cv-00927 (N.D. Cal.) (class action that introduced the concept of “greenwashing” in violation of California advertising laws);
- xiii. *Rosen v. Unilever United States Inc.*, No. 09-02563 JW (N.D. Cal.);
- xiv. *In Re: Glaceau Vitaminwater Marketing & Sales Practices Litig.*, No. 1:11-md-02215-DLI-RML (E.D.N.Y.);
- xv. *Lam v. General Mills, Inc.*, No. 11-cv-5056 SC (N.D. Cal.);
- xvi. *In re General Mills, Inc. Kix Cereal Litig.*, No. 2:12-cv-00249-KM-MCA (D.N.J.);
- xvii. *In re: Frito Lay North America, Inc. “All Natural” Litigation*, No. 1:12-MD-02413 (E.D.N.Y.) (class action alleging that snack food products labeled as “natural” contain genetically modified organisms);
- xviii. *In re: Simply Orange Orange Juice Marketing & Sales Practices Litigation*, No. 4:12-md-02361 (W.D. Mo.) (class action alleging that orange juice labeled as “100% pure” and “natural” contains synthetic flavoring and is subject to a high degree of processing);
- xix. *Barron v. Snyder’s-Lance, Inc.*, No. 0:13-cv-62496 (S.D. Fla.) (class action alleging that snack food products labeled “natural” contain genetically modified organisms and synthetic ingredients);
- xx. *Koehler v. Pepperidge Farm, Inc.*, No. 13-cv-02607 (D. Colo.) (class action alleging

- that snack food labeled “natural” contains genetically modified organisms);
- xxi. *Rich v. Lowe’s Home Centers, Inc.*, No. 3:13-cv-30144 (D. Mass.) (class action alleging violation of Massachusetts Unfair Trade Practices Act and unjust enrichment);
- xxii. *Brenner v. Williams-Sonoma, Inc.*, No. 1:13-cv-10931 (D. Mass.) (class action alleging that defendant gathered customers’ ZIP codes during credit card transactions, which it used to build databases for advertising and campaigns in violation of the Massachusetts Unfair Trade Act);
- xxiii. *Paulino v. Conopco, Inc.*, No. 1:14-cv-05145 (E.D.N.Y.) (class action alleging that “Suave Naturals” products, which use imagery of “natural ingredients” to convey a supposed benefit of the product, contain harmful and synthetic chemicals in violation of New York and California consumer protection laws);
- xxiv. *Segedie v. The Hain Celestial Group, Inc.*, No. 7:14-cv-05029 (S.D.N.Y.) (class action alleging that infant formula is falsely labeled “organic” because it contains ingredients that are not allowed in “organic” products under federal law);
- xxv. *Hidalgo v. Johnson & Johnson Consumer Cos.*, No. 1:15-cv-05199 (S.D.N.Y.) (class action alleging deceptive labeling of baby care products);
- xxvi. *Normand v. Nestle Purina Petcare Co.*, No. 6:15-cv-06141 (W.D.N.Y.) (class action alleging that branded dog food is linked to the poisoning and death of thousands of dogs around the country);
- xxvii. *Gonzalez v. Costco Wholesale Corp.*, No. 1:16-cv-02590 (E.D.N.Y.) (class action alleging deceptive labeling in connection with laundry detergent and dish soap products);

- xxviii. *Gibson v. The Quaker Oats Company*, No. 16-cv-04853 (E.D. Ill.) (class action alleging deceptive and false labeling of oat products);
- xxix. *Stevenson v. Post Consumer Brands, LLC and Post Holdings, Inc.*, No. 1:16-cv-03396 (E.D.N.Y.); *Wu v. Post Consumer Brands, LLC, and Post Holdings, Inc.*, No. 3:16-cv-03494 (N.D. Cal) (class-actions alleging deceptive and false labeling of wheat cereal products);
- xxx. *Salamanca v. General Mills, Inc.*, No. 3:16-cv-04871 (N.D. Cal.); *Nuez v. General Mills, Inc.*, No. 1:16-cv-04731 (E.D.N.Y.); *Woloszyn v. General Mills, Inc.*, No. 0:16-cv-02869 (D. Minn.) (class actions alleging deceptive and false labeling of oat products).

Background of Litigation and Work to Achieve Settlement

7. Through discovery, Plaintiff obtained Defendant's telemarketing policies and practices, correspondence, and contracts relating to the relationship between Mr. Hariri and LiveTransfers.com, and the calling records of all pre-recorded calls that LiveTransfers.com made for Mr. Hariri during their relationship.

8. Plaintiff then obtained an expert witness to evaluate the calling records to identify the scope of the putative class. Plaintiff's expert determined that 25,830 individuals received pre-recorded calls on their cellular telephones or received multiple calls to a residential number that was on the National Do-Not-Call Registry.

9. By the time the parties commenced settlement negotiations, they fully understood the scope of the class, the strengths and weaknesses of their respective claims and defenses, and the extent of class wide damages.

10. The parties mediated with the Honorable Morton Denlow (Ret.) of JAMS in

Chicago, and that mediation resulted in the proposed settlement that is before this Court.

11. Plaintiff assisted with the drafting of the Complaint, provided information regarding their interactions with Defendant, and was ready and willing to respond to discovery, sit for depositions, and testify at trial. Plaintiff's services were instrumental to the initiation and prosecution of this action, and it expended considerable time and effort to assist Class Counsel with this case. Plaintiff not only informed counsel of the predicate facts, it also provided counsel with relevant documents in its possession and timely answered inquiries from its attorneys.

12. Assuming the Court grants the requested attorneys' fees, litigation expenses, and notice and settlement administration fees, Plaintiff estimates that each claiming Settlement Class member could receive up to \$815, assuming a 10% claims rate, which exceeds the complete recovery a plaintiff could receive for a negligent violation of the TCPA. *See* 47 U.S.C. § 227(b)(3)(B) (allowing for \$500).

Background and Circumstances Surrounding the Fee Application

13. 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.

14. As discussed above, Class Counsel have actively litigated this case, and the time they dedicated to this case supports their requested fee.

15. This strategy enabled Class Counsel efficiently and effectively to obtain information about the strengths and weaknesses of Plaintiff' claims.

Class Counsel Costs

16. My firm has incurred \$616.00 of costs prosecuting this action, including an estimate of what will be incurred through the final approval hearing. This amount primarily comprises the amount paid for general litigation expenses, including research, travel to depositions and hearings, and administrative costs.

SIGNED UNDER PAIN AND PENALTY OF PERJURY THIS 23rd DAY OF JUNE, 2017.

A handwritten signature in black ink, appearing to read "Kim E. Richman". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Kim E. Richman