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Attorneys for Plaintiffs and the Class

[Additional Counsel on Signature Page.]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

McKENZIE LAW FIRM, P.A., and OLIVER
LAW OFFICES, INC. on Behalf of
Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Case No. 3:18-cv-01921-SI

**JOINT DECLARATION IN SUPPORT OF
MOTION FOR FINAL APPROVAL AND
AWARD OF ATTORNEY FEES AND
COSTS AND SERVICE AWARDS TO
PLAINTIFFS**

We declare and state as follows:

1. I, Keith Dubanevich, am a member of the bar of the State of Oregon and a shareholder at the law firm of Stoll Stoll Berne Lokting & Shlachter P.C. (“Stoll Berne”).
2. I, Laurence King, am a member of the bar of the State of California, admitted *pro hac vice* in this matter, and am a partner at the law firm of Kaplan Fox & Kilsheimer LLP.
3. I, Robert Lax, am a member of the bar of the State of New York, admitted *pro hac vice* in this matter, and am a partner at the law firm of Lax LLP.
4. I, Jon M. Herskowitz, am a member of the bar of the State of Florida, admitted *pro hac vice* in this matter, and am a partner at the law firm of Baron & Herskowitz LLP.
5. I, Gregory Brod, am a member of the bar of the State of California, admitted *pro hac vice* in this matter, and am a shareholder at the law firm of Brod Law Firm, P.C.
6. We are co-lead counsel and Settlement Class Counsel for Court-appointed Class Representatives McKenzie Law Firm, P.A. (“McKenzie”) and Oliver Law Offices, Inc. (“Oliver”). We are also counsel for Plaintiff Maiden Insurance LLC (“Maiden”) in the action styled *Maiden Insurance LLC v. Ruby Receptionists, Inc.*, No. 17CV48545, currently pending in the Multnomah County Circuit Court (the “State Action”).
7. We have personal knowledge of the facts stated below and with the proceedings in this case. If called as witnesses, we would and could competently testify thereto to all facts within our personal knowledge.
8. We respectfully submit this joint declaration in support of Plaintiffs’ Motion for Final Approval and Award of Attorneys’ Fees and Costs and Service Awards to Plaintiffs.

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9. The purpose of this declaration is to summarize (a) the factual and procedural history of the above-captioned action (“Federal Action”), (b) the work performed by Class Counsel, (c) the terms of the Settlement, (d) the Notice program, and (d) the fees and expenses incurred to date.

I. INTRODUCTION AND SUMMARY OF WORK PERFORMED

10. After years of hard-fought and contentious litigation, the Parties have reached an agreement to resolve the proposed Settlement Class’s claims against Ruby pursuant to the Settlement Agreement.¹ The Settlement was reached only after extensive arm’s-length negotiations between experienced counsel, including several mediation sessions and additional negotiations facilitated by mediator Hunter R. Hughes, III, Esq. *See* Dkt. 272. Pursuant to the Settlement, based on a “mediator’s proposal,” Ruby has agreed to provide \$8 million in vouchers for services as well as abide by comprehensive remedial measures and injunctive relief in the form of business practice changes and future commitments related to Ruby’s billing practices.

11. During the litigation, Class Counsel performed a significant amount of work, including:

- a. Conducting an initial investigation which uncovered the basis for the factual allegations that form the basis of the Action, and developing the theories of liability and facts that formed the basis of the allegations against Defendant.

¹ All capitalized words are defined in the Settlement Agreement, attached hereto as Exhibit 1.

- b. Drafting and researching a comprehensive complaint, detailing Defendant's violations based on its billing practices.
- c. Successfully conducting exhaustive legal research and opposing Defendant's motions to dismiss.
- d. Drafting, negotiating, and entering into several case management documents, including a Stipulated Protective Order and several similar documents that contributed to the effective and efficient administration of this Action.
- e. Propounding requests for production of documents, requests for admission, interrogatories, conducting many extensive meet and confers, and reviewing more than 325,000 pages of documents.
- f. Deposing two corporate representatives of Ruby, ten other Ruby witnesses, three Ruby experts, and five opt out Ruby customers.
- g. Preparing for and defending Plaintiffs' depositions.
- h. Retaining a damages expert, and preparing for and defending his deposition.
- i. Successfully obtaining class certification and defending against multiple motions, including a motion to stay, a motion to preclude class certification, three motions for summary judgment, a motion to decertify the class, and a motion to compel arbitration.

- j. Engaging in protracted settlement discussions and mediations with Defendant, including participating in an in-person mediation, a Zoom mediation, many subsequent emails and telephone calls over several more months of mediator-facilitated negotiations.
- k. Documenting the settlement terms with Defendant.

II. HISTORY OF THE ACTIONS

12. Class Counsel's work in this case began, in earnest, in July of 2017. As these cases raised novel factual allegations based upon information not readily available to Ruby's customers or the general public, the eventual filings followed only after a thorough investigation of Ruby's billing practices. Class Counsel were not aided by governmental investigations or media exposes. The facts alleged in this case were uncovered by Class Counsel's investigatory work during this time.

13. It was clear from the outset that litigating this matter was likely to be a large undertaking, requiring significant attorney, staff, and financial resources, with payment contingent upon a victory and likely delayed for several years, and which would almost certainly require the outlay of significant cash expenditures during this time. Since it would be difficult for the firms involved to undertake the entirety of the burden alone, it was in the best interests of all concerned – including Plaintiffs – that the lawyers from the various firms work cooperatively to bring this Action.

14. Although the initial intentions were to file this case elsewhere, it soon became evident that the forum selection clause required this case to be filed in Portland, Oregon. Efforts were undertaken to locate Oregon counsel ready, willing, and able to take on this matter, while counsel were aware that the statute of limitations was running. Although that search began from many directions, they all lead back to the Stoll Berne firm generally, and Keith Dubanevich in particular, as almost uniquely possessing the expertise, experience, and resources required.

15. The path taken by this case, a journey of four years, consuming thousands of hours of attorney time, hundreds of thousands of dollars of out-of-pocket expenses, and ever-growing risk demonstrated how the resources of any one firm would have been greatly strained – if not put past the breaking point. As the price of poker went up, the diversified legal team which distributed the cost and risks of continuing this litigation allowed this case to continue in the face of the relentless defenses put up by Ruby. The entirety of the geographically diverse Class Counsel team – Oregon and non-Oregon counsel – were necessary to provide the level of representation provided to the Class in this matter as well as the unrelenting commitment to this case that eventually brought Defendant to the table.

A. The State Action

16. Prior to bringing the Federal Action, counsel brought the State Action in the Multnomah County Circuit Court.

17. Plaintiff Shapiro Law Group, P.A. filed the original complaint in the State Action on October 13, 2017 against Defendant. That was dismissed on November 7, 2017. The case referred to herein as the State Action, *Maiden Insurance LLC v. Ruby Receptionists, Inc.*,

Multnomah County Circuit Court Case No. 17CV48545, was filed on November 7, 2017. The State Action complaint alleged claims for breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, and money had and received.

18. A mediation was held with Teresa Wakeen on April 23, 2018. The parties did not settle the State Action.

19. Defendant answered the complaint on May 14, 2018, and thereafter filed a motion to dismiss on July 2, 2018. Plaintiff filed an opposition to the motion to dismiss on August 24, 2018. Defendant filed a reply on September 7, 2018. The Multnomah County Circuit Court heard Defendant's motion on September 17, 2018 and allowed the plaintiff to conduct discovery and Defendant to file an amended motion to dismiss.

20. Defendant filed an amended motion to dismiss on October 31, 2018.

21. Plaintiff Maiden thereafter filed a motion to intervene on June 10, 2019, which was granted on June 14, 2019. Thereafter, Shapiro Law Group, PA withdrew as plaintiff.

22. Maiden filed an amended complaint on June 20, 2019, and Defendant filed an answer on June 28, 2019.

23. The parties engaged in substantial discovery. A protective order was entered in the State Action on June 19, 2018. Plaintiffs thereafter produced documents, and Defendant produced over 169,000 pages of documents. The Parties also sought the Multnomah County Circuit Court's guidance over a number of discovery disputes. A partial list is as follows:

- a. Maiden filed a motion to compel production on June 29, 2018, and Defendant filed a motion for a limited stay of discovery on July 5, 2018. The Parties filed responses on November 8, 2018, and the Multnomah County Circuit Court heard the motions on November 20, 2018. The Multnomah County Circuit Court decided the motions on December 13, 2018.
- b. Defendant filed a motion for further protective order on January 18, 2019. Maiden responded on February 4, 2019, and Defendant filed its reply on February 11, 2019. The Multnomah County Circuit Court heard the motion on February 27, 2019 and entered an order on April 5, 2019.
- c. Defendant filed a motion to compel production on March 15, 2019. Maiden opposed the motion on April 1, 2019, and Ruby filed a reply on April 11, 2019. The Multnomah County Circuit Court heard the motion on April 24, 2019 and entered an order on May 15, 2019.
- d. Maiden filed a second motion to compel on July 3, 2019. Defendant filed its response on August 5, 2019. Maiden filed a reply on August 22, 2019. The Multnomah County Circuit Court heard the motion on September 5, 2019 and entered an order on November 20, 2019.
- e. Maiden also filed a motion for leave to file documents in the public record or under seal on July 3, 2019. Defendant responded to the motion on August 5, 2019. Maiden filed a reply on August 22, 2019. The Multnomah

County Circuit Court heard the motion on September 5, 2019 and entered an order on November 20, 2019.

- f. Defendant filed a motion to confirm privileged and confidential documents on August 2, 2019. Maiden filed a response on August 22, 2019, and Defendant filed a reply on August 30, 2019. The Multnomah County Circuit Court heard the motion on September 5, 2019 and entered an order on November 20, 2019.
- g. Maiden filed a second motion for leave to file documents in the public record or under seal on August 22, 2019. Defendant filed a response on August 30, 2019. The Multnomah County Circuit Court entered an order on December 17, 2019.
- h. Maiden filed a motion for leave to file documents in the public record or under seal on November 8, 2019. Defendant filed a response on November 22, 2019. The Multnomah County Circuit Court entered an order on December 17, 2019.
- i. Maiden filed a motion for commission to take a foreign deposition on January 21, 2020.

24. After engaging in the above-mentioned discovery, Maiden filed an opposition to Defendant's amended motion to dismiss on November 8, 2019. Defendant filed its reply in further support of the amended motion to dismiss on November 27, 2019. The Multnomah County Circuit Court heard the amended motion to dismiss on December 4, 2019. Maiden

thereafter filed supplemental briefing in opposition to the amended motion to dismiss on December 18, 2019, and Defendant filed a response to Maiden's supplemental brief on December 20, 2019. The Multnomah County Circuit Court denied the amended motion to dismiss on December 24, 2019.

25. Maiden filed a motion for class certification on January 27, 2020. Defendant filed its opposition on March 5, 2020, and Maiden filed a reply on March 16, 2020. Defendant also sought leave to file a supplemental memorandum in opposition to Plaintiffs' motion for class certification on May 29, 2020. Maiden's motion for class certification was pending, when this Court certified a class in the Federal Action.

26. In addition, Defendant filed a motion for partial summary judgment on January 31, 2020. Maiden filed an opposition on February 18, 2020, and Defendant filed its reply on March 5, 2020. Defendant's motion for partial summary judgment was pending when Maiden sought a stay of the State Action.

27. Maiden filed a motion to stay the State Action on May 22, 2020, because this Court had already certified a class that potentially overlapped with approximately 95% of the class in the State Action. Ruby filed a response in opposition on June 1, 2020, and Maiden filed a reply in further support of the stay on June 4, 2020. The Multnomah County Circuit Court heard the motion to stay on June 5, 2020, and, on June 15, 2020, entered an order granting the motion.

B. The Federal Action and Settlement Negotiations

28. On November 2, 2018, Plaintiffs filed their class action complaint (Dkt. 1). Plaintiffs alleged that Ruby failed to disclose its billing practices of rounding up to the next 30-seconds and for billing while callers were on hold. Plaintiffs alleged four causes of action: breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, and money had and received – accounting. *Id.*

29. On January 4, 2019, Ruby filed a motion to dismiss or to stay the action (Dkt. 21, 22). Plaintiffs filed an opposition on January 25, 2019 (Dkt. 30, 31), and Defendant filed a reply on February 8, 2019 (Dkt. 37). The Court heard the motion March 11, 2019 (Dkt. 48) and denied the motion on April 25, 2019 (Dkt. 49). Defendant answered the Complaint on May 9, 2019 (Dkt. 50).

30. On January 28, 2019, Plaintiffs also filed a motion for partial summary judgment as to liability on their breach of contract claims (Dkt. 33-36). Defendant filed its opposition on February 25, 2019 (Dkt. 41-43), and Plaintiffs filed their reply on March 5, 2019 (Dkt. 45, 46). The Court, on April 25, 2019, ordered the Parties to submit supplemental responses if the Court denied Defendant's motion to dismiss (Dkt. 48). After the Court denied Defendant's motion to dismiss (Dkt. 50), Ruby submitted a supplemental response in opposition to Plaintiffs' motion for partial summary judgment on June 14, 2019 (Dkt. 55-57), and Plaintiffs submitted a supplemental reply on June 28, 2019 (Dkt. 58). On July 29, 2019, the Court denied Plaintiffs' motion for partial summary judgment (Dkt. 59).

31. The Parties submitted a Joint Rule 26(f) Report and Discovery Plan and a Proposed Case Management Schedule on August 26, 2019 (Dkt. 61), and the Court, on August 27, 2019, entered a case schedule (Dkt. 62) and trial management order (Dkt. 63). The Parties also entered into a stipulated motion regarding the technical specifications for electronic discovery on May 31, 2019 (Dkt. 53), which the Court granted June 3, 2019 (Dkt. 54), and a stipulated motion for a protective order on August 27, 2019 (Dkt. 64), which the Court granted the next day (Dkt. 65).

32. Plaintiffs engaged in substantial discovery efforts, as follows:

- a. Propounded document requests, and, in response, reviewed over 325,000 pages of documents produced by Ruby, including data from millions of calls handled by Ruby;
- b. Took the Rule 30(b)(6) deposition of Ruby on October 11, 2019 and August 5, 2020 (Jace Thompson), and October 17, 2019 and August 3, 2020 (Diana Stepleton);
- c. Took the deposition of non-party Justin Enger on November 16, 2019;
- d. Took the depositions of ten Ruby fact witnesses (Jill Nelson on October 28, 2019; Steve Severance on October 29, 2019; Jennifer Sullivan on November 1, 2019; Rachel Conrad on November 7, 2019; Casey Spurgeon on November 11, 2019; Ashley Fisher-Nelson on November 12, 2019; David DeRego on November 15, 2019; Jewel Miller on November 18,

2019; Katherine Nester on November 22, 2019; and Kendra Austin on November 26, 2019);

- e. Reviewed documents and took the depositions of Ruby's experts (Lori Bocklund on June 30, 2020; Arik Van Zandt on June 29, 2020; and Glen Waddell on July 31, 2020); and
- f. Took discovery and perpetuation depositions of Ruby customers (Diane Haar on October 16, 2020; Mark Metzger on October 19, 2020; Edward Blum on October 20, 2020; Jana Lombardi on October 22, 2020; Kristine Boelte on October 27, 2020).

33. Plaintiffs and Class Counsel also responded to extensive discovery, including:

- a. Objecting, answering, searching for and producing hundreds of pages of documents in response to Defendant's document requests;
- b. Preparing for and defending the depositions of Plaintiff Oliver (on May 25, 2019) and McKenzie (on June 6, 2019); and
- c. Submitting two expert reports by Plaintiffs' damages expert Albert Rossi, producing documents, and preparing and defending his depositions (January 23, 2020 and August 28, 2020).

34. Plaintiffs and Class Counsel also conducted numerous discovery-related meet and confers with Defendant and held multiple telephone conferences with the Court concerning various discovery matters (Dkt. 87, 92, 94, 113, 127). In addition, the Parties filed memoranda

concerning non-party Justin Enger (Dkt. 95-100), which the Court resolved on December 16, 2019 (Dkt. 104).

35. In addition, Plaintiffs retained an expert, Albert Rossi of Rossi LLP, to review Ruby's call database and to work with members of his firm to design a methodology which would allow him to prove the entitlement to damages, and in what amount, for each member of the Class in a single trial. This was a time consuming and expensive process, with Class Counsel advancing Mr. Rossi's fees for the benefit of the Class. Mr. Rossi submitted his report, which was relied upon by the Court in certifying the Class, and Mr. Rossi was prepared to testify at trial.

36. On September 17, 2019, Ruby filed a motion to preclude class certification (Dkt. 66-80). After the Court ordered that briefing on Ruby's motion to preclude class certification and Plaintiffs' scheduled motion for class certification be done on the same schedule (Dkt. 84, 106), Plaintiffs filed their motion for class certification and in opposition to Defendant's motion to preclude class certification on January 6, 2020 (Dkt. 107-111). Ruby filed its reply in further support of its motion to preclude class certification and in opposition to Plaintiffs' motion for class certification on February 5, 2020 (Dkt. 116-118). Plaintiffs filed their reply in further support of their motion for class certification on February 26, 2020 (Dkt. 120, 121). The Court heard Defendant's motion to preclude class certification and Plaintiffs' motion for class certification on April 3, 2020 (Dkt. 125). On April 24, 2020, the Court granted class certification, certifying a class of all persons or entities in the United States who obtained receptionist services from Ruby between November 2, 2012 and May 31, 2018, pursuant to its form Services

Agreements (Dkt. 128). The Court also denied Defendant's motion to preclude class certification. *Id.*

37. Thereafter, the Parties entered a scheduling order concerning expert discovery and dispositive motions (Dkt. 130). The Court also heard Plaintiffs' motion concerning Ruby's communication with class members (Dkt. 133-135, 137) and, on May 29, 2020, entered an order limiting Defendant's ex parte contact (Dkt. 139).

38. In addition, the Court heard and resolved issues concerning the notice of pendency (Dkt. 140, 144-146 149, 174-178, 183, 187, 190) as well as Defendant's motion to extend the case schedule (Dkt. 150-152, 156-161).

39. The Parties held a mediation with Mr. Hughes via Zoom on July 7, 2020 (Dkt. 272). The Parties did not settle at that time (Dkt. 172). During the course of the litigation, the Parties would continue corresponding with each other through Mr. Hughes.

40. On July 1, 2020, Ruby filed two motions for summary judgment – one concerning contract interpretation (Dkt. 163) and the other concerning affirmative defenses and damages (Dkt. 164, 166-169). Ruby also filed a motion for decertification (Dkt. 165) and a motion to file excess pages (Dkt. 162), which the Court granted (Dkt. 170). On August 21, 2020, Plaintiffs filed their oppositions to Ruby's two motions for summary judgment (Dkt. 194-197) and to Ruby's motion for decertification (Dkt. 202). On September 25, 2020, Ruby filed its replies in further support of its first two motions for summary judgment (Dkt. 219, 220, 222-225), as well as in further support of its motion for decertification (Dkt. 221).

41. On August 21, 2020, Plaintiffs filed a motion for summary judgment (Dkt. 198). The same day, Ruby filed a third motion for summary judgment concerning terms and conditions and arbitration (Dkt. 199, 201). On October 2, 2020, Plaintiffs filed their opposition to Ruby's third motion for summary judgment (Dkt. 226). The same day, Defendant filed its opposition to Plaintiffs' motion for summary judgment (Dkt. 227-229). On October 16, 2020, Ruby filed its reply in further support of its third motion for summary judgment (Dkt. 245, 246), and Plaintiffs filed their reply in further support of their motion for summary judgment (Dkt. 243).

42. Also, on August 21, 2020, Plaintiffs filed a motion to exclude Defendant's expert Lori Bocklund (Dkt. 203-207). On September 10, 2020, Ruby moved to deny as moot or to continue briefing schedule concerning Plaintiffs' motion to exclude (Dkt. 211). Plaintiffs responded on September 17, 2020 (Dkt. 213), and Defendant filed a reply on September 21, 2020 (Dkt. 214). On September 22, 2020, the Court denied Defendant's motion to deny as moot or continue the briefing schedule (Dkt. 215). On October 3, 2020, Defendant filed its opposition to Plaintiffs' motion to exclude (Dkt. 232-234), and Plaintiffs filed their reply in further support of the motion to exclude Defendant's expert on October 16, 2020 (Dkt. 244).

43. In addition, on September 9, 2020, Plaintiffs filed a motion to exclude certain evidence (Dkt. 208-210). Defendant responded on September 23, 2020 (Dkt. 217, 218), and Plaintiffs filed their reply on October 6, 2020 (Dkt. 238, 239).

44. Defendant further sought permission to depose persons who opted out of the class and to permit contact with such persons (Dkt. 235-337). Plaintiffs responded (Dkt. 241-242), and Ruby replied (Dkt. 247). The Court granted the motion on October 19, 2020 (Dkt. 248).

45. On October 30, 2020, the Court heard Defendant's four motions (three summary judgment motions and the motion for decertification) and Plaintiffs' three motions (a motion for summary judgment and two motions to exclude). On November 18, 2020, the Court resolved and denied all the motions (Dkt. 256).

46. After the Court's resolution of the various motions and while preparing for trial scheduled for January 2021, the Parties reengaged with Mr. Hughes (Dkt. 272). Mr. Hughes facilitated the production of certain of Defendant's financial information to Plaintiffs' counsel. *Id.*

47. After multiple offers and counteroffers, on November 27, 2020, Mr. Hughes, taking into consideration the strengths and weaknesses of the case, the possible outcomes of a trial, and collectability of any judgment, made a mediator's proposal of \$8 million in services by Defendant to the proposed Settlement Class, plus injunctive relief requiring Ruby to maintain certain measures in describing its receptionist minutes calculation policy. *Id.* The Parties accepted the mediator's proposal.

48. After the Parties accepted the mediator's proposal for relief to the Settlement Class, Mr. Hughes next made a mediator's proposal concerning attorneys' fees and costs of an all-inclusive \$4 million. *Id.* The Parties accepted the mediator's proposal.

49. On November 30, 2020, upon settling the matter, the Parties filed a joint stipulation and request to vacate (Dkt. 258), which the Court granted (Dkt. 259).

50. The Parties thereafter engaged in protracted settlement agreement negotiations, which culminated in the February 17, 2021 original settlement agreement (Dkt. 269-1).

51. Prior to signing the original settlement agreement, on December 16, 2020, Defendant filed a Notice of Appeal as to the Court's November 18, 2020 decision denying Ruby's Motion to Compel Arbitration (Dkt. 261). On March 4, 2021, the Ninth Circuit administratively closed the appeal docket until August 31, 2021 (Dkt. 275).

52. Plaintiffs filed the Joint Motion for Preliminary Approval of Proposed Settlement Agreement on February 19, 2021 (Dkt. 269), their own Memorandum in Support (Dkt. 270). Defendant filed its joinder on the same day (Dkt. 268). Plaintiffs filed a corrected Memorandum in Support (Dkt. 273) on February 22, 2021.

53. On March 3, 2021, the Court entered an Order which instructed the Parties to be prepared to respond to a list of questions at a hearing on the Joint Motion for Preliminary Approval of Proposed Settlement Agreement so as to assist the Court in its review of the Settlement (Dkt. 274). The Parties conferred and separately responded to the questions posed in the Court's March 3, 2021 Order (Dkts. 277, 278).

54. The Court heard the Joint Motion for Preliminary Approval of Proposed Settlement Agreement on March 22, 2021. Having thoroughly considered the motion and the relevant record, the Court granted preliminary approval of the Settlement, certified a Settlement Class, and, among other things, set a hearing for final approval for July 8, 2021 (Dkt. 280). On April 7, 2021, the Court entered a corrected Preliminary Approval Order (Dkt. 281).

III. THE SETTLEMENT TERMS

55. The Settlement Class means “all persons or entities in the United States who obtained receptionists services from Ruby between October 13, 2011 and May 31, 2018, pursuant to its form Service Agreement.” Excluded from the Settlement Class are: a) Ruby, its affiliates, its Directors and Officers, the attorneys of any party, and the Court and its personnel; b) Persons who have timely and validly opted out of the Settlement Class; and c) Persons or entities who previously opted out of the action in response to the Notice of Pendency previously provided pursuant to the Court’s August 3, 2020 Order Regarding Notice. SA § 3.2.

56. The Settlement Class is comprised of 18,807 former and current Ruby customers (Dkt. 277).

57. The Settlement Agreement creates a voucher fund of \$8 million that Defendant will provide to each member of the proposed Settlement Class. *See* SA § 4.2.1. Vouchers will be redeemable for services provided by Ruby and its affiliates. *Id.* §§ 4.2.2; 4.2.10-4.2.11. Vouchers will be automatically distributed in intervals without the need to file a claim and are transferrable. *Id.* §§ 4.2.4-4.2.7. These vouchers, which do not require a consumer to spend any money in order to use them, will be valid for a period running from the date of a voucher’s actual distribution until the latter of (a) one year or (b) the minimum period of time necessary to utilize the full value. *Id.* § 4.2.9.

58. The amount of each Settlement Class Member’s pro rata share of the \$8 million in total vouchers will first be calculated by determining the percentage of Ruby’s total receptionist billings for the Settlement Class Period represented by the Settlement Class’s billings for the

period, less any amounts previously credited from the use of Ruby's money back guarantee policy. SA § 4.2.3(a). For those Settlement Class Members whose pro rata share is greater than zero dollars (\$0) but less than \$49.00, they will receive a voucher in the amount of \$49.00. *Id.* § 4.2.3(c). For those Settlement Class Members whose pro rata share is greater than \$49.00, they will receive a voucher in an amount equal to their pro rata share of the difference between \$8 million and the total amount represented by the \$49 vouchers. *Id.* § 4.2.3(d). The total redeemable amount of all vouchers to be allocated will not exceed \$8 million. *Id.* § 4.2.1.

59. The Settlement Agreement also requires Ruby to make business practice commitments for a period running no less than three years. SA § 4.3.1. These business practice commitments include informing Settlement Class Members about how Ruby charges in 30-second increments rounded up and that Ruby charges for hold time. Specifically, Ruby will continue so describing its billing practices in its form Terms and Conditions, will continue to train its staff to disclose these billing practices with its customers, and will describe its billing practices in its marketing materials consistent with its Terms and Conditions. *Id.* §§ 4.3.2-4.3.4.

60. In exchange for the foregoing consideration, subject to Court approval, Settlement Class Members would release Ruby from all claims, causes of action, damages, losses or damages of any kind relating to Ruby's billing practices. In addition, the State Action would be dismissed. SA §§ 5.1-5.7; *id.* §§ 7.1-7.2.

61. The Settlement Agreement also provides that Class Counsel may seek an amount not to exceed \$4 million, inclusive of attorneys' fees, reasonable costs, and expenses. SA § 6.1-6.2. This provision was negotiated after all monetary and equitable relief terms of the proposed

Settlement had been agreed upon and was based on the mediator's proposal (Dkt. 272). The Court's determination as to the amount of attorneys' fees and expenses to be paid to Class Counsel will not affect the remaining provisions of the Settlement. *Id.* § 6.1.

62. The Settlement Agreement further provides that Class Counsel may apply to the Court for Service Awards of up to \$1,000 to each of the Class Representatives for the time, effort, and risk in connection with the Federal and State Actions, including stepping forward to represent the proposed Settlement Class, searching for and producing data and documents, and preparing and sitting for their depositions. SA § 6.5. The Service Awards will come from the amount of attorneys' fees and costs that are approved by the Court, and are not conditioned on Plaintiffs' support of the proposed Settlement. Class Counsel negotiated the amount of Service Awards independently from the other terms of the proposed Settlement. *Id.*

63. The recovery here is fair, reasonable, and adequate in light of the risks, especially given the financial issues Ruby was encountering – and continues to encounter – given the global pandemic.

IV. NOTICE PROGRAM AND SETTLEMENT ADMINISTRATION

A. Class Notice Program

64. The Settlement Agreement provided that the Administrator not only administer the Settlement but also effectuate the Notice program. *See* SA §§ 8(e), 9(1)-9(5).

65. Because the Court appointed The Notice Company as Notice Administrator, *id.* § 1.6, the Parties reengaged The Notice Company as the Administrator for the Settlement.

66. The notice program included direct email and/or mail, along with a case-specific website. *See* Decl. of Joseph M. Fisher re Compliance with Notice Requirement, dated May 6, 2021 (“Fisher Decl.”), ¶ 8 (Dkt. 285). The Notice program was designed to provide the “best notice that is practicable under the circumstances. *See* Fed. R. Civ. P. 23(c)(2)(B). The Notice program proposed by the Parties and approved by the Court has been implemented by the Settlement Administrator. Fisher Decl., ¶ 3.

67. Ruby provided the Administrator with the email and/or mailing address of record of each of Ruby’s customers, consisting of 18,807 entries and a “Class Distribution List” of 18,662, excluding 135 entries who previously requested exclusion from the lawsuit and 10 entries for Ruby affiliates. *See id.* ¶¶ 10-15. Emails were sent by the Administrator to those whose email addresses are valid; otherwise, the Administrator mailed a copy of the Notice to the Settlement Class Member. *Id.*

68. By April 21, 2021, the Administrator sent 18,571 emails to Settlement Class Members. *Id.* ¶¶ 11-12. 3,226 emails were not delivered, with 1,544 “soft” bounces. *Id.* ¶ 12. After a 5-day pause, emails were sent again to soft-bounced recipients. *Id.* The net number of records delivered by email were 15,387 representing 15,421 Ruby customers. *Id.* The number of emails not delivered totaled 3,184 representing 3,208 Ruby customers. *Id.*

69. The Administrator mailed Notices of Settlement to those Settlement Class Members whose email addresses were unknown or where email delivery was unsuccessful. *Id.* ¶¶ 13-15.

70. The Administrator also established the Settlement Website that allowed Settlement Class Members to read the Notice of Settlement and other documents related to this matter. SA § 9(2); Fisher Decl., ¶ 16. The Settlement Website meets the requirements under Rule 23(c)(2)(B) and 23(e)(1) of the Federal Rules of Civil Procedure (“Rule”), including the posting of key Court orders and other filings. The Settlement Website also allows Settlement Class Members to opt out of the Settlement online. *See* Fisher Decl., ¶ 16. As of May 6, 2021, there have been 7,318 visits to the Settlement Website by 5,036 unique visitors. *Id.*

71. The Administrator also established a toll-free telephone line for information on the Settlement. *Id.* ¶ 17.

72. The Administrator also sent on April 9, 2021 appropriate notices to federal and state government officials, as required by the Class Action Fairness Act. *See* SA § 9.4; Fisher Decl., ¶¶ 6-7.

73. Pursuant to the Settlement Agreement, Ruby bears the expense of the Administration of the Settlement, up to \$100,000. *See* SA § 10.

B. Class Notice

74. The notices included all the information required under Rule 23(c)(2)(B): (1) information about the nature of the litigation and essential terms of the Settlement; (2) contact information for Class Counsel, including information about how to obtain additional information about the litigation and Settlement; (3) the address for the informational website, www.Rubyreceptionistslitigation.com, maintained by the Administrator; (4) instructions on how to access the case docket via PACER or in person at any of the Court’s locations; (5) the date of

the final approval hearing, including that the date may change without further notice and that Settlement Class Members should check the Settlement Website or the Court's PACER site to confirm that the date has not changed; and (6) information about, and means for, objecting to or excluding oneself from the Settlement. *See* Fisher Decl., Ex. B and C. The notice also informed Settlement Class Members that if they do not comply with the specified procedures and deadlines for excluding themselves, they will be bound by the Settlement and lose any opportunity to bring any of the Released Claims against Defendant. *Id.*

75. The Class Notice satisfies the requirements of Rule 23(h)(1), as it notifies Settlement Class Members that Class Counsel will apply to the Court for attorneys' fees and costs in an amount not to exceed \$4 million. *See id.* The Class Notice complies with Rule 23(e)(5) in that it discusses the rights Settlement Class Members have concerning the Settlement. The Class Notice includes information on a Settlement Class Member's right to: (1) request exclusion and the manner for submitting such a request; (2) object to the Settlement, or any aspect thereof, and the manner for filing and serving an objection; and (3) participate in the Settlement and instructions on how to complete and submit a Claim Form to the Settlement Administrator. *Id.* The Notice also provides contact information for Class Counsel, as well as the postal address for the Court. *Id.* The Notice further conveys all information necessary for Settlement Class Members to make informed decisions relating to the Settlement. *Id.*

C. Responses of the Settlement Class to Date

76. As of May 6, 2021, the Settlement Administrator has received nine requests for exclusion. *See* Fisher Decl., ¶ 18. This is in addition to the 135 requests who earlier opted out of the Federal Action in response to the Notice of Pendency. *Id.*

77. Class Counsel have received telephone calls, emails, and letters from the Settlement Class, and have responded to such correspondence. Class Counsel will continue to respond to any telephone calls, emails, and/or letters from the Settlement Class. Class Counsel have also received several congratulatory notes from Settlement Class Members.

V. ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

A. Attorneys' Fees and Costs

78. Negotiated separately from the terms of the Settlement was the amount of attorneys' fees and expenses. Pursuant to the Settlement, Plaintiffs and Class Counsel agreed to seek or accept no more than \$4 million from Ruby for attorneys' fees and expenses combined. SA § 6.1. Ruby agrees not to oppose an application for an award up to that amount. *Id.*

79. Class Counsel has prosecuted the State Action and Federal Action on a contingent basis to a successful conclusion on behalf of Plaintiffs and the Settlement Class.

80. Class Counsel worked on a contingency basis and assumed the risk of challenging Ruby, a defendant that would have continued to vigorously defend its business practices had the litigation gone forward. Ruby contested its liability from the very beginning, asserting that Settlement Class Members had failed to adequately allege any viable claims, filing multiple

motions to dismiss and summary judgment motions, and appealing this Court's decisions. Ruby continues to deny liability.

81. Class Counsel have significant expertise in consumer class actions. The quality of their representation is reflected in the work they performed throughout the case and, ultimately, in the favorable settlement for the Settlement Class. Over the course of several years, Class Counsel advanced the litigation in the face of motions to dismiss, motions for summary judgment, discovery issues, and other roadblocks.

82. As noted above, Class Counsel performed substantial work throughout this litigation. Class Counsel researched and drafted the operative complaint, successfully defended against a motion to dismiss, oversaw and conducted extensive discovery, prevailed on a motion for class certification, successfully defended against three motions for summary judgment and two motions related to class certification, and were preparing for trial.

83. With respect to Settlement, Class Counsel prepared for and attended multiple mediation sessions, reviewed, edited, and negotiated the terms of the Settlement, and will prepare further documents in support of the motion for final approval. Class Counsel have also been and will continue to communicate with Settlement Class Members about the Settlement.

84. The reasonableness of the \$4 million fee award is supported by the total lodestar of Class Counsel. Class Counsel's collective lodestar as of May 1, 2021, based on the current usual and customary billing rates of each firm, is \$6,028,139.75 based on 9,756.63 hours billed for both the Federal and State Actions. These hourly rates are based on regular and ongoing

monitoring of market rates of the districts from which these law firms maintain offices for attorneys of comparable skill, experience, and qualifications.

85. Class Counsel attach as Exhibits 2-6 true and correct copies of each firm's lodestar information as well as expenses garnered due to the litigation.

86. As of May 1, 2021, Class Counsel have also expended \$333,633.51 in unreimbursed costs and expenses in connection with the prosecution of this litigation. *See id.* All of these costs and expenses are reflected in the books and records of our respective firms, which are prepared from expense vouchers, check records, invoices, and other source materials, and represent an accurate recordation of the costs and expenses incurred in connection with this litigation. The \$4 million fee amount covers all unreimbursed costs and expenses.

87. With the costs and proposed Service Awards included, the \$4 million fee amount represents a negative multiplier of .61 of Class Counsels' lodestar, as of May 1, 2021. The negative multiplier will continue to increase with the additional work Class Counsel expects to spend on these cases, including but not limited to work on the motion for final approval, the reply in support of final approval and settlement administration matters. Class Counsel respectfully submit that the \$4 million is warranted and reasonable under the circumstances.

B. Service Awards to Settlement Class Representatives

88. Class Counsel request Service Awards of \$1,000 for Plaintiffs McKenzie, Oliver, and Maiden. The Service Awards will come from the \$4 million in attorney fees and costs, subject to approval by the Court. *See SA § 6.5.*

89. Plaintiffs spent several years prosecuting the two Actions, hours reviewing pleadings, communicating regularly with Class Counsel, responding to discovery requests, sitting for and in two cases traveling to the West Coast for their depositions, and reviewing and producing documents.

90. Plaintiffs were instrumental in the success of the Actions, and the Service Awards are warranted, given the Settlement they each helped achieve for the benefit of Settlement Class Members.

91. As such, Plaintiffs respectfully request that the Court approve the negotiated fee agreement, as it was reached based upon a mediator's proposal only after the benefit to the Class was agreed upon, does not diminish the relief made available to the Settlement Class, represents a significant discount from Plaintiffs' counsel's lodestar expended throughout four long years of litigation, and is also warranted by the benefits conferred upon the Class through the Settlement.

VI. CONCLUSION

92. In view of the substantial benefits conferred on the Settlement Class, the contingent nature of the fee, the source of the fee as separate from and in addition to the benefit of the Settlement Class, the complexity of the case, the risks of the litigation, the enormous effort of Plaintiffs' counsel, and the quality of the work performed, Plaintiffs respectfully request that this Court:

- a. Approve the proposed Settlement as fair, reasonable, and adequate;
- b. Certify the proposed Settlement Class; and
- c. Approve the attorneys' fees and reimbursement sought by Plaintiffs' counsel and awards to Class Representatives that Defendants have agreed to pay subject to Court approval.

We declare under penalty of perjury under the law of the United States of America that the foregoing are true and correct. Executed this 11th day of May, 2021.



Keith S. Dubanevich

Laurence D. King

Robert I. Lax

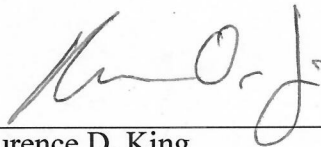
Jon M. Herskowitz

Gregory J. Brod

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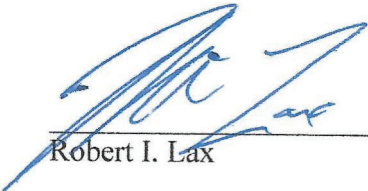
Page 28 - JOINT DECLARATION IN SUPPORT OF MOTION FOR FINAL APPROVAL AND
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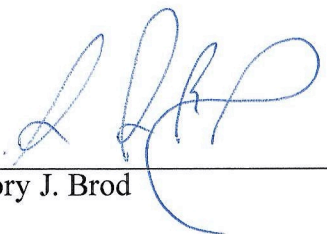
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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

McKENZIE LAW FIRM, P.A., and OLIVER
LAW OFFICES, INC. on Behalf of
Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Case No. 3:18-cv-01921

CORRECTED CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (the “Agreement”) is made and entered into as of the 17th day of February, 2021, by and among (1) McKenzie Law Firm, P.A. and Oliver Law Offices, Inc., (the “The McKenzie Class Representatives”), on behalf of themselves and all others similarly situated, (2) Maiden Insurance, LLC (“Maiden”) on behalf of itself and all others similarly situated (together, the “Settlement Class” as defined below), and (3) Ruby Receptionists Inc. (“Ruby”).

1. RECITALS

1. On or about November 2, 2018, McKenzie Law Firm, P.A. and Oliver Law Offices, Inc. filed an action in the United States District Court for the District of Oregon, captioned *McKenzie Law Firm v. Ruby Receptionists, Inc.*, No. 3:18-cv-01921 (SI) (the “Federal Action”).

2. On or about October 13, 2017, Shapiro Law Group, P.A., filed an action in the Circuit Court of Oregon, Multnomah County, captioned *Shapiro Law Group v. Ruby Receptionists, Inc.*, No. 17 CV 48545, and on June 20, 2019 Maiden was substituted as Plaintiff in that action, which became captioned *Maiden Insurance, LLC v. Ruby Receptionists, Inc.*, No. 17CV48545 (the “State Action”).
3. The Complaints in the Federal and State Actions both asserted that Ruby breached its contracts with its customers by miscalculating call length by rounding up the length of calls to the next highest thirty second interval and including time callers spent in a hold queue waiting for a receptionist to handle the call. The Complaints asserted causes of action for breach of contract, breach of the implied duty of good faith and fair dealing, restitution, unjust enrichment and assumpsit under Oregon Law.
4. On April 24, 2020, the Court in the Federal Action certified a Class of all persons or entities in the United States who obtained receptionist services from Ruby between November 2, 2012 and May 31, 2018 and appointed the undersigned counsel as Class Counsel.
5. On June 15, 2020, the Court in the State Action entered a stay of proceedings, pending the determination of the Claims in the Federal Action.
6. On August 3, 2020 the Court in the Federal Action appointed The Notice Company of Hingham, Massachusetts as Notice Administrator (the “Administrator”).
7. The undersigned Class Counsel are familiar with the claims being settled and the defenses in the Federal and State actions. Class counsel have had the opportunity

to conduct, and have conducted, extensive discovery and investigation relating to the events alleged in the Complaints.

8. The McKenzie Class Representatives, Maiden and their counsel believe that the Actions have merit. Ruby and its counsel believe that Ruby has valid defenses. The terms of this Agreement were reached after extensive, bona fide arm's-length negotiations among counsel for the parties, including extensive mediation before Hunter R. Hughes, III, Esq., with fees discussed only after material agreement was reached as to the benefits to be supplied to the Settlement Class (as defined below) in exchange for their Releases hereunder.
9. The parties and their counsel acknowledge the uncertain outcome and the risk of further litigation, as well as the difficulties, delays, and costs inherent in such litigation. The McKenzie Class Representatives, Maiden and Class Counsel have also taken into account the substantial benefits conferred on the McKenzie Class Representatives, Maiden and the Settlement Class (as defined below) by the settlement set forth in this Agreement. The McKenzie Class Representatives, Maiden and their counsel have therefore determined that the settlement set forth in this Agreement is fair, reasonable, and in the best interests of the McKenzie Class Representatives, Maiden and the Settlement Class.
10. The parties want to avoid the substantial expense, inconvenience, and distraction of continuing to litigate the Actions through trial and appeals.

NOW, THEREFORE, in consideration of the mutual covenants and other consideration described below, and subject to approval of the Federal Court, the parties, by and through their respective undersigned counsel agree as follows:

2. DEFINITIONS

The following terms shall have the following meanings when used herein (it being understood that other terms are defined elsewhere in this Agreement):

1. “Class Counsel” means Keith Dubanevich, Stoll Berne Lokting & Shlachter, P.C.; Laurence King, Kaplan Fox & Kilsheimer LLP; Robert I. Lax, Lax LLP; Jon M. Herskowitz, Baron & Herskowitz LLP; and Gregory J. Brod, Brod Law Firm, P.C.
2. “Court” means the United States District Court for the District of Oregon, unless otherwise specified.
3. “Effective Date” means the first date by which all the conditions and events specified in Section 13 have been met and have occurred.
4. “Fee Application” means the application to be filed by Class Counsel by which they will seek an award of attorneys’ fees and expenses.
5. “Final,” with respect to the Judgment, means that the Judgment shall have become non-appealable and shall not have been reversed, vacated, or modified. If the Judgment is set aside, modified in a form not mutually agreeable to the parties, vacated or reversed (and not fully reinstated on further appeal), then the Judgment is not Final, and the Effective Date cannot occur.
6. “Final Settlement Hearing” means the hearing to be held by the Court to determine whether the settlement set forth in this Agreement should be finally approved as fair, reasonable, and adequate.
7. “Judgment” means the Judgment and Order of Dismissal of the Action provided for in Section 12.

8. “Person” means any individual, corporation, partnership, or other entity.
9. “Releasor” or “Releasers” means, without limitation, the McKenzie Class Representatives, Maiden and each and all of the Settlement Class Members who have not timely requested exclusion from the Settlement Class pursuant to Section 9.7.

3. THE SETTLEMENT CLASS

1. For purposes of this settlement and Agreement only, and for no other purpose, “Settlement Class” shall mean all persons or entities in the United States who obtained receptionist services from Ruby between October 13, 2011 and May 31, 2018.

2. Excluded from the Settlement Class are:

(a) Ruby, its affiliates, its Directors and Officers, the attorneys of any party, and the Court and its personnel.

(b) Persons who have timely and validly opted out of the Settlement Class pursuant to Section 9.7.

(c) Persons or entities who have previously opted out of the Federal Action in response to the Notice of Pendency previously provided pursuant to the Court’s August 3, 2020 Order Regarding Notice.

4. SETTLEMENT BENEFITS

1. Ruby agrees that in consideration of the Releases set forth in Section 5, Ruby will provide to each Releasor the benefits described in this Section 4.

2. Vouchers For Services Provided By Ruby and Its Affiliates

1. Commencing with the later of July 1, 2021 or the Settlement Effective Date, Ruby will distribute, through the Administrator, Vouchers for services to be provided by

Ruby and its affiliates in the total amount of \$8 Million and, with respect to individual Settlement Class Members, an amount not to exceed the amount allocated to each Settlement Class Member per the methodology outlined in Section 4.2.3 below.

2. Vouchers shall be redeemable only for self-service chat provided under the brand Pure Chat or Reception services provided by Ruby. Vouchers will not be redeemable for any other service.

3. Vouchers will be distributed to Settlement Class Members automatically via the Administrator, without need for filing a claim. The dollar value of an individual Voucher to be distributed to each Settlement Class Member shall be computed according to the following methodology:

- (a) An amount of each Settlement Class Members' pro rata share of \$8 Million in total available Vouchers shall be fixed by first determining the percentage of Ruby's total receptionist billings for the Settlement Class Period represented by the Settlement Class Member's billings for the period, less any amounts previously credited from the use of Ruby's money back guarantee policy.
- (b) A Settlement Class Member that either never paid for Ruby service or was refunded all monies paid for Ruby service shall have a pro rata share of zero dollars (\$0) and receive no Vouchers.
- (c) A Settlement Class Member whose pro rata share as determined according to Section 4.2.3(a) is greater than zero dollars (\$0) but less than \$49.00, shall be entitled to a Voucher in the amount of \$49.00.

- (d) A Settlement Class Member whose pro rata share as determined according to Section 4.2.3(a) is greater than \$49.00, shall be entitled to a Voucher, in an amount equal to their pro rata share of the difference between \$8 Million and the amount represented by the Vouchers described in Section 4.2.3(c); provided however that the total redeemable amount of all Vouchers to be allocated pursuant to Sections 4.2.3(b), (c), and (d) shall not exceed \$8 Million.
- (e) Any Settlement Class Member or transferee not then a current customer of Ruby who elects to redeem a Voucher for receptionist services that is for an amount less than the minimum monthly price of a published receptionist service package (as of the date of this Agreement, \$319.00 per month) must subscribe to, and pay the additional price for, at least the minimum published package at the time of redemption.

4. Vouchers shall be transferable by Settlement Class Members one time to any person or entity. The Settlement Administrator shall create a protocol to track the transfer of Vouchers in the avoidance of fraud, which shall be overseen by Class Counsel and Ruby.

5. Vouchers will be distributed to Settlement Class Members in a maximum of six quarterly allotments over a period beginning the later of July 1, 2021, or the Settlement Effective Date. Vouchers will be distributed according to the following schedule:

- (a) 1,000 Settlement Class Members will receive Vouchers in the first quarter after the Settlement Effective Date;

- (b) 3,400 Settlement Class Members will receive Vouchers in the second quarter after the Settlement Effective Date;
- (c) 3,400 Settlement Class Members will receive Vouchers in the third quarter after the Settlement Effective Date;
- (d) 3,400 Settlement Class Members will receive Vouchers in the fourth quarter after the Settlement Effective Date;
- (e) 3,400 Settlement Class Members will receive Vouchers in the fifth quarter after the Settlement Effective Date;
- (f) The remaining Settlement Class Members will receive Vouchers in the sixth quarter after the Settlement Effective Date;
- (g) Ruby may in its sole discretion decide to exceed the number of Settlement Class Members to which Vouchers are distributed per quarter stated in Sections 4.2.5(a)-(f).

6. Subject to the schedule provided in Section 4.2.5, Ruby shall have the right to determine in its sole discretion which Settlement Class Members shall receive Vouchers in each quarter, and in no event will Ruby be required to redeem Vouchers in an amount greater than \$1.33 million dollars in any one quarter or to redeem Vouchers from current receptionist service customers in an amount greater than \$575,000 in any one quarter.

7. To that end, and to facilitate Voucher redemption within Ruby's billing system, Ruby may work with the Administrator to develop a consolidated file of Vouchers by Ruby client identification numbers and a unique code number for each Voucher.

8. A Settlement Class Member that intends to activate service and redeem a Voucher in the first billing period after receipt must inform Ruby of this intent at the time of

signup. Ruby may in its sole discretion defer activation of service for a period not to exceed 90 days, provided however that Ruby will make good faith efforts to activate service as promptly as reasonably practicable given business considerations such as staffing capacity. This paragraph does not apply to active Ruby customers that will redeem Vouchers for ongoing service.

9. A Voucher will be valid for a period running from the date of its actual distribution to a Settlement Class Member until the latter of (a) one year, or (b) the minimum period of time necessary to utilize the full value of the Voucher.

10. Vouchers redeemed for receptionist services are redeemable only for monthly base minutes. It is expressly understood that Vouchers may not be redeemed for the cost of overage minutes or for applicable taxes, and Settlement Class Members shall be responsible for any charges for overage minutes beyond their monthly plan base allotment and for any applicable taxes.

11. A Voucher may be redeemed only for a single Ruby service and only for a continuous, uninterrupted period of service. A Voucher may not be applied to more than one Ruby service or to discontinuous periods of service. If a Voucher is redeemed for one period of Ruby service and then, for any reason including cancelation, not used in the immediately subsequent billing period, the Voucher will thereafter be unredeemable and without residual value. A Voucher must be redeemed for at least the minimum published service price or greater during the entirety of the redemption period.

12. Vouchers shall be useable subject to Ruby's terms of use and usual standards of service, and not in violation of such standard terms applicable to other Ruby customers. Settlement Class Members will still be required to pay for any amount exceeding the Voucher value in order to cover i) the minimum monthly service price outlined in Sections

4.2.3(e), ii) overages and iii) applicable taxes. The Settlement Administrator shall design a Voucher that will contain text advising recipients of restrictions and requirements on the use of Vouchers pursuant to this section.

13. Ruby may impose reasonable additional requirements for usage of Vouchers consistent with its standard business practices when applied to its customers generally. Such reasonable additional requirements may include without limitation: requiring a valid credit card number upon signup, requiring 30 days' notice before cancelation of service, and requiring customers to assume responsibility for monitoring usage of receptionist minutes to avoid incurring overage charges.

14. The Administrator will provide Ruby and Class Counsel with a summary report on the electronic delivery of Vouchers, including but not limited to send date, open date, soft bounces, and hard bounces, and any click throughs to imbedded links. The Administrator will provide Ruby with a summary report on the mail delivery of Vouchers including but not limited to send date and returned Vouchers.

15. Ruby retains the right to change prices of their services, provided however that in no event will Ruby charge Voucher holders prices higher than those published on Ruby's website or otherwise generally prevailing for Ruby customers.

16. Ruby may communicate directly with settlement class members concerning the Voucher process, the nature and use of Vouchers, and other topics related to the administration of this settlement. Where appropriate, Ruby may direct settlement class members to the Administrator or Class Counsel for answers to their questions. Ruby may also communicate with settlement class members concerning continued use of Ruby's products and services after their Vouchers have expired, consistent with the provisions of this Agreement. Ruby may not

communicate with settlement class members in such a way that would interfere with the administration of the Voucher process as described in this Agreement.

3. Commitment to Disclosure

1. From the Effective Date through a period running for no less than three years, Ruby will maintain specific measures to describe its billing practices to members of the Class and other Ruby customers according to the guidelines below.

2. As it has since at least August 2018, after the lawsuit was filed, in its form Terms and Conditions Ruby will describe its billing practices in a similar level of detail as the following:

Receptionist minutes are billed in 30-second increments and calls are rounded up to the nearest 30-second mark. As an example, if a call is ten seconds long, it will be billed as 30 seconds (or half a receptionist minute). For inbound calls, receptionist time is calculated starting from the time the receptionist receives the call and ending when a receptionist transfers the call through to someone, or to voice mail, or otherwise disconnects because the call is over. We include hold time and exclude the talk time once a call is transferred to you or your voicemail box.

As soon as commercially practicable after the Settlement Effective Date, the word “nearest” will be changed to “next.” Notwithstanding the foregoing, Ruby reserves the right to change its billing and pricing methodologies inclusive of how it calculates Receptionist Minutes, in which case it will make full disclosure of the new practices.

3. As it has since after the lawsuit was filed Ruby will continue to train its Customer Happiness staff to describe Receptionist Minutes in terms substantially consistent with

subsection 2 of this section, disclosing that receptionist minutes are calculated in a manner that rounds up all calls to the next highest 30-second interval and includes time callers are on hold.

4. Ruby marketing materials that discuss pricing will be substantially consistent with Ruby's form Terms and Conditions in describing how receptionist minutes are calculated and hold time is charged.

5. RELEASES

1. Upon the Effective Date, in exchange for the consideration specified herein and save and except for the rights, duties and obligations of this Agreement, the Releasors, on behalf of themselves and any and all of their respective successors-in-interest, affiliates, assigns, heirs, insurers, executors, officers, directors, agents, employees, attorneys, parent companies, subsidiaries, administrators, principals, shareholders, representatives, partners, joint venturers, predecessors-in-interest, trusts, trustors, trustees, beneficiaries, and all others who may take any interest in the matter herein, jointly and severally, fully and forever release, acquit and discharge all Ruby and all Ruby affiliated companies, and their respective successors-in-interest, affiliates, assigns, heirs, insurers, executors, officers, directors, agents, employees, attorneys, parent companies, subsidiaries, administrators, principals, shareholders, representatives, partners, joint venturers, predecessors-in-interest, trusts, trustors, trustees and beneficiaries and all others who may take any interest in the matter herein from all claims, causes of action, demands, losses or damages of any kind, whether based on contract, tort, statutory or other legal or equitable theory of recovery, whether now known or unknown, suspected or unsuspected, existing, claimed to exist or which can ever hereinafter exist, arising or which could be claimed to arise out of or in connection with, or related in any way to the claims relating to Ruby's billing practices, alleged or referred to in the Federal or State Complaints, including but not limited to claims sounding in

the contract or consumer protection laws of the United States or of any state or other jurisdiction in the United States, as well as under the unfair or deceptive trade practices, trade regulation, consumer fraud, fraudulent misrepresentation and false advertising law of the United States or any state or other jurisdiction in the United States, including but not limited to any claims relating to Ruby's billing practices (the "Released Claims"). The Release contained herein shall not constitute a release of or relieve the parties of any of their respective future obligations under this Agreement.

2. The Releasors acknowledge that the consideration exchanged in this Agreement is intended to and will release and discharge any claim and/or cause of action by them, or any of them, as described in Section 5.1 above, with regard to any unknown or future damage, loss or injury, and that they, and each of them, do hereby waive any rights under California Civil Code Section 1542 (or similar law of any other state or jurisdiction), which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT, AND REASONABLY COULD NOT HAVE KNOWN, TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

3. The Releasors acknowledge, warrant, and represent that they are familiar with Section 1542 of the California Civil Code (or similar law of any other state or jurisdiction) and that the effect and import of that provision has been fully explained to them by their respective counsel.

4. The Releasors acknowledge that there is a risk that subsequent to the execution of this Agreement, one or more of the Releasors will incur or suffer losses, damages, or injuries related to the subject matter of this Agreement, which are unknown and unanticipated at the time this Agreement is signed. The Releasors, and each of them, hereby assume the above-mentioned

risks and understand that this Agreement shall apply to all unknown or unanticipated claims, losses, damages or injuries relating to the subject matter of this Agreement, as well as those known and anticipated, and upon advice of legal counsel, the Releasors, and each of them, do hereby waive any and all rights under the aforesaid Section 1542. The Releasors acknowledge that they fully understand that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention hereby to fully, finally and forever release all claims, obligations and matters released herein, known or unknown, suspected or unsuspected, which do exist, may exist in the future or heretofore have existed between the Releasors and Ruby, and that in furtherance of such intention, the releases given herein shall be and remain in effect as full and complete releases of the matters released herein, notwithstanding the discovery or existence of any such additional or different facts.

5. The parties to this Agreement each represent to the other that they have received independent legal advice from attorneys of their own choosing with respect to the advisability of making the settlement provided for in this Agreement, and with respect to the advisability of executing this Agreement, that they have read this Agreement in its entirety and fully understand its contents, and that each is executing this Agreement as a free and voluntary act.

6. The covenant not to sue and the releases in this Agreement shall extend and inure to the benefit of all Ruby affiliated companies, including but not limited to Ruby Receptionists, Inc. and its respective successors-in-interest, affiliates, assigns, heirs, insurers, executors, officers, directors, agents, employees, attorneys, parent companies, subsidiaries, administrators, principals, shareholders, representatives, partners, joint venturers, predecessors-in-interest, trusts,

trustors, trustees and beneficiaries and all others who may take any interest in the matter herein (collectively, the “Released Parties”).

7. Each of the Releasors represents and warrants to each Released Party that the Releasor has not heretofore assigned, hypothecated, or otherwise transferred, or attempted to assign, hypothecate or transfer, any claim or claims against the Released Parties and that there is no other person or legal entity that has not executed this Agreement as a Releasing Party that has any interest in any such claim or claims against the Released Parties. Each Releasor hereby agrees to indemnify and hold harmless all Released Parties from any and all liabilities, claims, demands, obligations, damages, costs, expenses and attorneys’ fees arising from or related to any claim which, if true, would constitute a breach of this representation and warranty including, but not limited to, all claims resulting from anyone asserting such interest, assignment, hypothecation or transfer.

6. ATTORNEYS’ FEES AND EXPENSES

1. The amount of attorneys’ fees and expenses shall be determined by the Court. In the Fee Application, Plaintiffs and Class Counsel agree to seek or accept no more than \$4,000,000 from Ruby for attorneys’ fees and expenses combined, notwithstanding any greater award by the Court. Ruby agrees not to oppose an application for an award of attorneys’ fees and expenses combined up to that amount. Plaintiffs and Class Counsel further agree that an award by the Court of the combined total of less than \$4,000,000 will have no effect on the settlement or this Agreement. The Court’s or an appellate court’s failure to approve, in whole or in part, any award of attorneys’ fees and expenses to Class Counsel shall not affect the validity or finality of the Settlement, nor shall such non-approval be grounds for rescission of the Settlement Agreement, as such matters are not the subject of any agreement among the Parties other than as

set forth above. In the event the Court declines to approve, in whole or in part, the payment of attorney fees, litigation costs and expenses to Class Counsel in the amount sought by Class Counsel, the remaining provisions of this Agreement shall remain in full force and effect.

2. Ruby shall pay the amount awarded to Class Counsel by the Court up to \$4,000,000.00 into an interest-bearing escrow account titled for the benefit of each of the law firm's awarded fees and expenses by the Court within 14 days of the entry of the Court's Judgment and Order of Dismissal of the Action provided for in Section 12, or any separate Order awarding reasonable attorneys' fees and expenses to Class Counsel, whichever comes later. It is specifically agreed that when paid into escrow, title in these funds shall pass to Class Counsel, and Ruby's interest in the funds will be purely contingent on the Effective Date failing to come to pass.

3. The awarded fees and expenses in escrow, together with any accrued interest, shall be released to Class Counsel five (5) calendar days of the Effective Date of this Settlement, or the following business day should that day fall on a weekend or holiday.

4. Ruby will pay (upon request, by wire transfer) the fees and expenses provided for in Sections 6.1 and 6.2 to the escrow account of Stoll Stoll Berne Lokting & Shlachter, P.C., which shall be responsible for distributing it amongst Class Counsel as agreed upon by Class Counsel.

5. Class Counsel will request permission from the Court to compensate the Class Representatives and Maiden participation fees of \$1,000.00 each (\$3,000.00 total) to partially compensate them for the services they have undertaken for the benefit of the Class during these lawsuits. Any such amounts awarded by the Court shall be paid exclusively out of counsel fees awarded by the Court, for which Ruby shall have no liability.

7. DISMISSAL OF THE STATE ACTION

1. Maiden will participate in, be bound by, and will not object to or opt out of the settlement set forth in this Agreement, and upon the Settlement Effective Date Class Counsel shall take all necessary steps to cause the dismissal of the State Action, with prejudice, and without costs to any party.

2. Pending the Effective Date, Class Counsel and counsel for Ruby will jointly request continuation or reinstatement of the Stay presently entered in the State action, should that become necessary to preserve the status quo while effecting this Settlement.

8. PRELIMINARY SETTLEMENT APPROVAL ORDER

Promptly after execution of this Agreement, Class Counsel shall submit this Agreement to the Court and shall apply for entry of a Preliminary Settlement Approval Order, which among other things, shall:

- (a) conditionally certify the Settlement Class as defined in Section 3.1, for the purpose of effecting the Settlement only;
- (b) preliminarily approve the settlement set forth in this Agreement;
- (c) designate The McKenzie Class Representatives as the representatives of the Settlement Class;
- (d) designate Class Counsel as counsel for the Settlement Class;
- (e) designate the Administrator and instruct the Administrator to perform the necessary functions in accordance with the Agreement, the Preliminary Approval Order, and the Final Approval Order;
- (f) preliminarily approve the Settlement set forth in this Agreement;

(g) approve the Notice of Class Action Settlement (the “Notice”) and order that it be disseminated as provided for in Section 9.1;

(h) find that the distribution of the Notice as provided for in Section 9, constitutes the best notice practicable under the circumstances and complies fully with the requirements of federal law and any other applicable law;

(i) provide that Settlement Class Members shall have the right to “opt out” of this Agreement as provided for in Section 9.7, but that this opt out right must be exercised individually and in writing, and not on a representative, derivative, class-wide, or subclass-wide basis, and that Settlement Class Members who opt out shall not have standing to intervene in this proceeding or object to the proposed Settlement;

(j) provide that any Settlement Class Member who does not opt out may, as provided for in Section 9.8, object to the proposed settlement, the proposed Judgment, and/or any application for attorneys’ fees;

(k) schedule the Final Settlement Hearing to be held by the Court to consider and determine (i) whether the Settlement set forth in this Agreement should be approved finally as fair, reasonable and adequate, (ii) whether the proposed Judgment approving the Settlement should be entered; and (iii) whether the application of Class Counsel for attorneys’ fees and reimbursement of expenses should be approved;

(l) provide that the Final Settlement Hearing may from time to time, without further notice to the Settlement Class, be continued or adjourned by order of the Court; and

(m) provide that, pending final determination of whether the Settlement set forth in this Agreement is approved, no member of the Settlement Class, whether directly, representatively, derivatively, or in any other capacity, shall commence, prosecute, or participate

in (actively or inactively) any action or proceeding in any court or tribunal asserting any of the Released Claims against any of the Released Parties.

9. NOTICE OF SETTLEMENT, EXCLUSIONS AND OBJECTIONS

1. As soon as possible, and not later than 30 days after the Court's entry of the Preliminary Approval Order, the Administrator shall send by email, where email contact information is available and deliverable, the Notice of Settlement to every member of the Settlement Class. The emailed notice will be formatted in a manner so that it is viewable in most email platforms. The settlement administrator will also mail the class notice to all known Settlement Class members identified on Ruby's client list, other than those with an available and deliverable email address. The Notice of Settlement shall be substantially in the form of Exhibit A to this Agreement, subject to approval by the Court. The Administrator will forward all Notices of Settlement that are returned by the U.S. Postal Service with a forwarding address.

2. The Administrator shall establish a Settlement Website that enables Settlement Class Members to read the Notice of Settlement; relevant pleadings such as the operative complaints, papers in support of preliminary and final approval of the Settlement, and Class Counsel's Fee Application; relevant orders of the Court; and any other information the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, as well as review, complete, and submit a Request for Exclusion online. The Settlement Website will be on the pre-existing informational website located at Rubyreceptionistslitigation.com. The Settlement Website shall be operational from no later than ten business days after the date of entry of the Preliminary Settlement Approval Order.

3. The Parties agree that the Notice of Settlement, and Settlement Website will provide information sufficient to inform Settlement Class Members of: (1) the essential terms of

this Settlement Agreement; (2) appropriate means for obtaining additional information regarding the Settlement Agreement and the State and Federal Actions; and (3) appropriate information about the procedure for objecting to or excluding themselves from the Settlement, if they should wish to do so. The Notice of Settlement will also include: (1) contact information for class counsel to answer questions; (2) the address for a website, maintained by the claims administrator, that has links to the notice, motions for approval and for attorneys' fees and any other important documents in the case; (3) instructions on how to access the case docket via PACER or in person at any of the court's locations; and (4) a statement that the date of the final approval hearing and clearly state that the date may change without further notice to the class. Class members should be advised to check the settlement website or the Court's PACER site to confirm that the date has not been changed. A draft of the Notice of Settlement is attached as Exhibit A. The Parties also agree that the dissemination of the Notice of Settlement in the manner specified in this section satisfies the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

4. The Administrator shall send appropriate notices to governmental agencies as required by the Class Action Fairness Act.

5. Within 45 days after the Court's entry of the Preliminary Approval Order, the Administrator will file with the Court a declaration of compliance with this plan of notice.

6. Within 50 days after entry of the Preliminary Approval Order, Class Counsel shall file the Motion for Final Approval and their Fee Application. Both shall be posted on the Settlement Website.

7. Settlement Class Members shall have the right to be excluded from, or "opt out" of, the Settlement Class and this Agreement electronically or by sending a written request for

exclusion to the Administrator. The written request for exclusion must be postmarked not later than 85 days after the entry of the Preliminary Approval Order (if by mail) or received by that date (in the case of electronically submitted exclusions) and must set forth: 1) the Class Member's name (individual or entity's name); 2) if an entity, then include the representative's full name and title; 3) mailing address; and 4) a statement that the class member wants to be excluded from the settlement in *McKenzie v. Ruby Receptionists*, Case No. 3:18-cv-01921.

8. Any Settlement Class Member who does not opt out may object to the proposed settlement or fee request by filing with the Court and mailing to Class Counsel and to counsel for Ruby by first-class mail postmarked not later than 85 days after entry of the Preliminary Approval Order, a written statement of objection which must set forth: (a) an identification of the action, *e.g.*, *McKenzie v. Ruby*; (b) the Settlement Class Member's full name or entity name, address; and (c) the specific reasons for the objection, and any evidence or legal authority the Settlement Class Member believes supports the objection. Any Settlement Class Member who has filed and served a written statement of objection may also enter an appearance at the Final Settlement Hearing either personally or through counsel of their choice, with the expense of such counsel to be borne by the objecting Settlement Class Member. Settlement Class Members and their counsel who intend to appear at the Final Settlement Hearing must file with the Court a written notice of appearance, which must be postmarked not later than 85 days after entry of the Preliminary Approval Order.

9. Within 95 days of the entry of the Preliminary Approval Order, the Administrator must provide to counsel a list of all exclusions, any objections received by the Administrator, and a declaration summarizing those exclusions and objections, and Ruby's counsel must file those materials with the Court within ten days after receipt.

10. Within 105 days after entry of the Preliminary Approval Order, Class Counsel shall file their reply, if any, in support of their Motion for Final Approval and Fee Application.

11. Within 21 days of the final distribution of vouchers as described in Section 4.2, the Parties shall file a Post-Distribution Accounting and cause it to be posted on the Settlement Website. The Post-Distribution Accounting shall include the total number of class members, the total number of class members to whom notice was sent and not returned as undeliverable, the number and percentage of opt-outs, the number and percentage of objections, the administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund, and the multiplier, if any, the average and median recovery per claimant, the number of class members availing themselves of the vouchers and the aggregate value redeemed by the class members and/or by any assignees or transferees of the class members' interests, and the benefit of the relief discussed in Section 3 to the class.

10. ADMINISTRATION OF SETTLEMENT

Ruby will bear the expense of the Administration of the Settlement, including the provision of Notice, receipt of any opt-outs, and distribution of settlement benefits made available under the Settlement, in an amount no greater than \$100,000. Any expense of administration above \$100,000 shall be borne by the class or by Class Counsel. Ruby shall not be responsible for any expense (including attorneys' fees) that may be incurred by, on behalf of, or at least at the direction of the Settlement Class Representatives, the Settlement Class Members or Class Counsel in (a) responding to inquiries about the Settlement Agreement, the Settlement, or the Federal or State Actions; (b) defending the Settlement Agreement or the Settlement against any challenge to it; or (c) defending against any challenge to any order or judgment entered pursuant to the Settlement Agreement, unless otherwise specifically agreed.

11. CANCELLATION OR TERMINATION

1. In the event that this Agreement is not approved by the Court substantially in the form submitted (or in a modified form mutually acceptable to the parties), or this Agreement is terminated or fails to become effective or Final in accordance with its terms, the Settlement Class Plaintiffs, the Settlement Class and Ruby shall be restored to their respective positions in the Action as of the date hereof. In such event, the terms and provisions of this Agreement shall have no further force and effect and shall not be used in this Action or in any other proceeding or for any purpose, and the parties will jointly make an application requesting that any Judgment entered by the Court in accordance with the terms of the Agreement shall be treated as vacated, nunc pro tunc, and any funds paid into escrow to benefit Class Counsel for court awarded attorneys' fees and expenses, along with any accrued interest thereon, shall revert back to Ruby.

2. By entering into this Agreement, Ruby is not consenting or agreeing to certification of the Settlement Class for any purpose other than to effectuate the settlement of the Action. The parties agree that if this Agreement is not approved by the Court substantially in the form submitted (or in a modified form mutually acceptable to the parties), or if this Agreement is terminated or fails to become effective or Final in accordance with its terms, the Action shall proceed as if no party had ever agreed to such settlement, without prejudice to the right of any party to take any and all action of any kind in the Action.

12. JUDGMENT AND ORDER OF DISMISSAL

The undersigned counsel shall submit to the Court a proposed Judgment and Order of Dismissal, substantially in the form annexed hereto as Exhibit B, which shall, among other things:

(a) find that the prerequisites set forth in federal law for the maintenance of the Action as a class action for settlement purposes have been met, and that the preliminary order certifying the Action as a class action shall become final;

(b) find that the Notice (and, if required, the Summary Notice), complies with the requirements of Federal Rule of Civil Procedure 23;

(c) approve the settlement as set forth in this Agreement as fair, reasonable and adequate in all respects pursuant to federal law and all other applicable laws, and order the parties to consummate the settlement in accordance with the terms of this Agreement;

(d) decree that neither the Judgment nor this Agreement shall constitute an admission by Ruby of any liability or wrongdoing whatsoever;

(e) dismiss this Action with prejudice and without costs, except as provided in Sections 6 and 10;

(f) decree that all Releasors shall, as of the entry of the Judgment, conclusively be deemed to have released and forever discharged the Released Parties from all Released Claims, and forever enjoin and bar all Releasors, whether acting directly, representatively, derivatively or in any other capacity, from commencing, prosecuting, or participating in (actively or inactively) any action or proceeding in any court or tribunal asserting any of the Released Claims against any of the Released Parties;

(g) award reasonable attorneys' fees and expenses to Class Counsel, as determined by the Court, in accordance with Section 6; and

(h) without affecting the finality of the Judgment, reserve exclusive and continuing jurisdiction over this Action, the Settlement Class Representatives, the Settlement Class Members, Ruby, and their respective counsel for the purpose of, among other things,

supervising the implementation, enforcement, construction and interpretation of this Agreement and the Judgment.

13. CONDITIONS OF SETTLEMENT

The effectiveness of this Settlement shall be conditioned on the occurrence of all of the following events:

- (a) all persons named at the end of this Agreement shall have executed it along with their respective counsel;
- (b) the Court shall have entered the Judgment, substantially in the form annexed hereto as Exhibit B (or in a modified form mutually acceptable to the parties), and shall not have granted a fee application that would cause the total award for attorneys' fees and costs to exceed \$4,000,000.00; and
- (c) the Judgment shall have become "Final" as defined in Section 2.5 of this Agreement.

14. AUTHORITY TO EXECUTE

Each counsel or other person executing this Agreement on behalf of any party hereto warrants that such person has the authority to do so.

15. GOVERNING LAW

This Agreement shall be subject to, governed by, interpreted, and enforced in accordance with the internal laws (including with regard to conflicts of law provisions) of the State of Oregon.

16. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

Executed counterparts shall be deemed valid if delivered by mail, courier, electronically, or by facsimile.

17. BINDING EFFECT OF SETTLEMENT

This Agreement shall be binding upon and inure to the benefit of the settling parties (including all Settlement Class Members who do not opt out of the settlement described in this Agreement), their respective agents, attorneys, insurers, employees, representatives, officers, directors, partners, divisions, subsidiaries, affiliates, associates, assigns, heirs, successors in interest and shareholders and any trustee or other officer appointed in the event of a bankruptcy.

18. ENTIRE AGREEMENT

This Agreement and any exhibits attached to it constitute the entire agreement between the parties hereto and supersede any prior agreements or understandings whether oral, written, express or implied between the parties with respect to the settlement. This Agreement shall not be amended, altered, or modified except by an instrument in writing signed by all parties, or their successors in interest. The parties recognize that the text was subject to negotiation and drafted by neither party.

19. NO ADMISSIONS

1. Entering into or carrying out this Agreement, and any negotiations or proceedings related thereto, shall not be construed or deemed to be evidence of an admission or concession by any party with respect to the merits of its position; and specifically shall not give rise to any presumption or inference of an admission or concession by Ruby of any fault, wrongdoing or liability whatsoever, which Ruby expressly denies. Entering into or carrying out this Agreement, and the negotiations or other proceedings related thereto, shall not be offered or received in evidence in this or any civil, criminal, administrative or other action or proceeding, before any

tribunal, for any purpose whatsoever other than to effectuate the provisions of this Agreement, to defend against the assertion of the Released Claims, or as otherwise required by law.

2. Except as otherwise expressly provided herein, neither this Agreement, nor any document referred to herein, nor any action taken to carry out this Agreement, shall be construed as giving rise to any waiver, or presumption or inference of admission or concession, by Ruby, the Settlement Class Representatives or the Settlement Class with respect to any rights or privileges any party may have under or with respect to any contracts or agreements between Ruby and its customers, including but not limited to any rights or privileges with respect to any provision concerning dispute resolution.

20. REPRESENTATIONS AS TO FINANCIAL CONDITIONS OF RUBY

It is expressly agreed and understood that Ruby has made certain representations about its financial condition to the Mediator in connection with the mediation of this case, and has produced for review certain financial information, all of which Class Counsel have relied upon as material factors for entering into this Settlement Agreement. Ruby represents and warrants that those representations and information were, in all material respects accurate, and will provide to the Court a declaration affirming the accuracy of the financial documentation provided during the Parties' mediation with Hunter R. Hughes, III, Esq., as part of its submissions in support of this agreement.

21. MISCELLANEOUS PROVISIONS

1. The parties acknowledge that violation of this Agreement or any of the releases will cause immediate irreparable injury for which no remedy at law is adequate. If either party fails to perform its obligations hereunder, the other party shall be entitled to specific

performance, including through mandatory preliminary and final injunctive relief, in addition to such other remedies as are provided herein or as may otherwise be available by law.

2. Except as otherwise provided herein, all notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally, by facsimile, by e-mail, or by overnight mail, to the undersigned counsel for the parties at their respective addresses.

3. The waiver by one party of any breach of this Agreement by another party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

4. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the Released Claims.

5. The section titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the intent of any of its provisions. This Agreement shall be construed without regard to its drafter, and shall be construed as though the parties participated equally in the drafting of this Agreement.

6. The parties and their counsel shall use their best efforts and cooperate in obtaining final court approval and implementation of this Agreement.

7. If the date for performance of any action required by or under this Agreement to be performed on a particular day or within a specified period of time falls on a Saturday, Sunday or Court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the time period specified by or under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

RUBY RECEPTIONISTS, INC., and its Counsel:



Kate Winkler, CEO
RUBY RECEPTIONISTS, INC.
805 SW Broadway #900
Portland, OR 97205



Renee E. Rothauge
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Telephone: (503) 727-2000
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Class Representatives and Class Counsel:

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Pensacola, FL 32503-3931
Telephone: (800)343-3067
Facsimile: (850) 202-2012



Jamie Oliver, Esq.
OLIVER LAW OFFICE, INC

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RUBY RECEPTIONISTS, INC.
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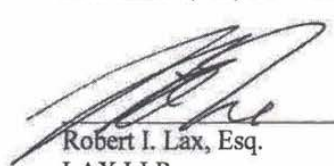
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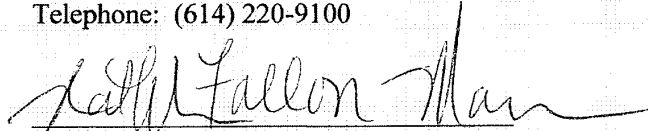


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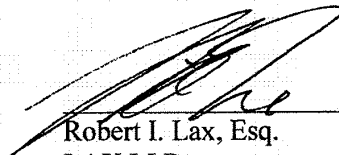
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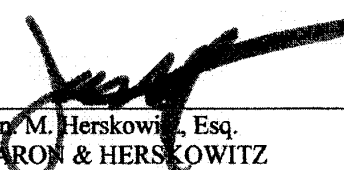
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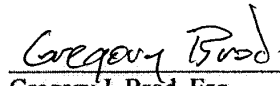
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Attorneys for Plaintiffs and the Class

[Additional Counsel on Signature Page.]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

McKENZIE LAW FIRM, P.A., and OLIVER
LAW OFFICES, INC. on Behalf of
Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Case No. 3:18-cv-01921-SI

DECLARATION OF KEITH S.
DUBANEVICH IN SUPPORT OF
MOTION FOR FINAL APPROVAL AND
AWARD OF ATTORNEYS' FEES AND
EXPENSES AND SERVICE AWARDS
TO PLAINTIFFS

I, Keith S. Dubanevich, declare under penalty of perjury and in accordance with the laws of the State of Oregon and the United States that:

1. I am one of the attorneys from Stoll Berne who has actively worked on this case and the related case, *Maiden Insurance LLC v. Ruby Receptionists, Inc.*, Multnomah County

Page 1 – DECLARATION OF KEITH S. DUBANEVICH

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Exhibit 2

Circuit Court Case No. 17CV48545, during the past several years. I reviewed the time records showing our firm's actual time spent on these cases and the costs incurred and advanced by our firm in prosecuting this litigation.

2. All timekeepers in our firm contemporaneously record their actual time spent during the course of the matter. I am confident that this practice was followed for all timekeepers, including attorneys and paralegals, on these cases.

3. Stoll Berne's lodestar as of May 1, 2021—the total value of all time spent by Stoll Berne timekeepers, multiplied by each timekeeper's current hourly rate—is \$2,058,134. One timekeeper, Jacob Gill, no longer works at Stoll Berne. Mr. Gill's 2018 hourly rate – the last year of his employment with our law firm — was used to calculate the total value of his time spent on the cases.

4. Stoll Berne's lodestar does not include significant time on the cases spent after May 1, 2021, the cutoff date Class Counsel used to calculate fees and costs in connection with the Motion for Final Approval and Award of Attorneys' Fees and Costs and Service Awards to Plaintiffs. Work on the case after May 1, 2021 is expected to include drafting the motion for final approval and supporting declarations, preparing a reply in support of the motion for final approval, responding to inquiries from Settlement Class Members, and, if the Court grants final approval, addressing issues that arise in connection with claims administration.

5. The total hours Stoll Berne spent on these cases, as of May 1, 2021, was 4528.55.

6. In an exercise of billing judgment, Stoll Berne has written off the value of some time on this matter. The value of time that has been written off was not included in the lodestar.

7. The lodestar also does not include the amount of out of pocket costs advanced by Stoll Berne in prosecuting the cases.

8. A summary of time spent on this matter is attached as Exhibit 1 to this Declaration. Exhibit 1 shows the value of all time based on current hourly rates, by timekeeper.

Page 2 – DECLARATION OF KEITH S. DUBANEVICH

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Exhibit 2

Exhibit 1 also shows separately the various categories of costs advanced by Stoll Berne and the total of those costs. Each of those costs was necessarily incurred in the prosecution of the cases, and Stoll Berne keeps contemporaneous records of all costs as they are incurred and paid. Stoll Berne advanced \$104,014.83 in out of pocket costs in this matter.

9. I know from my review of my firm's time records, and from my ongoing involvement in these cases, that Stoll Berne invested substantial time analyzing the factual and legal issues; briefing and arguing motions; reviewing and analyzing documents and data; consulting with an expert and clients; preparing for, taking, and defending depositions; attending mediations which spanned multiple sessions and negotiations; and negotiating, memorializing, and finalizing the terms of the proposed settlement. I can confidently say that Class Counsel invested significant resources, and took on significant risks, in prosecuting these cases to a successful conclusion. I can also say that the substantial time Stoll Berne spent limited other potential cases that Stoll Berne could accept.

10. My colleague Cody Berne and I reviewed our firm's time records to allocate the time spent among several different categories, including: (a) case assessment, pre-filing investigation, initial complaint; (b) briefs, motions, pleadings, research; (c) discovery and post-filing investigation; (d) class certification; (e) experts and consultants; (f) court appearances and preparation; (g) conferences, interviews, telephone calls, meetings, correspondence; and (h) settlement. When a time entry could be included in more than one category, we used our judgment to assign the entry to only a single category.

11. While a number of attorneys and other timekeepers in my firm have recorded time on this matter, the bulk of the time was recorded by myself and Mr. Berne.

12. A summary of my professional experience and Mr. Berne's professional experience was submitted as a Declaration [ECF 109] and Corrected Declaration [ECF 111] in Support of Motion for Class Certification. *See also* ECF 109, Exh. 1 and 2 (law firm biographies

Page 3 – DECLARATION OF KEITH S. DUBANEVICH

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
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PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

Exhibit 2

for Mr. Dubanevich and Mr. Berne). My current standard hourly rate is \$635. Mr. Berne's current standard hourly rate is \$415.

13. The standard hourly rates for attorneys at my firm range between \$365 and \$745, and the standard hourly rates for paralegals range between \$290 and \$315.

14. Each year, my firm reviews and adjusts billing rates based on a number of factors, including but not limited to the experience, skill, and sophistication required for the types of legal services provided by our firm to clients; the rates customarily charged in similar local and national markets for the types of services provided; and the experience, reputation, and ability of each of the attorneys and staff members.

15. Our firm also considers, particularly for work such as our representation of the Plaintiffs and the Class in this matter, that because of the nature of the action and the contingent nature of any recovery of our time and costs, that our firm may not be paid for long periods of time, if at all.

16. For example, in these cases our firm advanced the value of all time invested in the matter plus significant out of pocket costs for over 3.5 years, all while risking the possibility that we would never recover those amounts. While our firm deeply believes that such work is important to the legal system and the public, we take significant risks by investing time and money in matters which do not pay on a monthly or regular basis.

17. For that reason and others, our firm anticipates that cases of that risk profile will produce some degree of multiplier over the lodestar (typically two to three times the lodestar), although that will not happen under the terms of the proposed settlement in this matter. In fact, the combined value of the time invested by Class Counsel in these cases is far in excess of the amount the defendant agreed to pay.

18. I reviewed the Morones Survey of Commercial Litigation Fees, Portland, Oregon (2020) and the Oregon State Bar 2017 Economic Survey. The data in the Morones Survey is one

Page 4 – DECLARATION OF KEITH S. DUBANEVICH

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year old, while the data in the Bar's survey is over four years old. My current standard hourly rate of \$635 is slightly over the \$623 average rate in the Morones Survey for respondents with over 30 years' experience and the Bar's \$610/hr average rate for the 95th percentile of lawyers in the Portland area in private practice with over 30 years' experience. Mr. Berne's current hourly rate of \$415 is higher than the \$344/hr average rate in the Morones Survey for attorneys with 6 years' experience and the Bar's \$350/hr average rate for the 95th percentile of lawyers in the Portland area in private practice with over 6 years' experience.

19. The years of experience of the other timekeepers, along with their hourly rates, are: Steve D. Larson (30+ years, \$650); Timothy S. DeJong (25+ years, \$605); Steven C. Berman (25+ years, \$525); Jacob S. Gill (15+ years, \$385); Megan K. Houlihan (5 years, \$415); Lydia Anderson-Dana (4.5 years, \$415); Elizabeth K. Bailey (3.5 years, \$415); Sophie von Bergen (less than 1 year, \$325); Jason Dotts (paralegal, \$290, 21 years); Angelene Falconer (paralegal, \$290, 19 years); Margarita Fortner (paralegal, \$290, 12 years); and Wes Mueller (paralegal, \$290, 5 years).

20. Attached as Exhibit 3 is a true and correct copy of my law firm resume.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty of perjury.

DATED this 11th day of May, 2021.

By: 
Keith S. Dubanevich

Page 5 – DECLARATION OF KEITH S. DUBANEVICH

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Stoll Berne
Time report through May 1, 2021

Name	A	B	C	D	E	F	G	H	Total Hours	Hourly Rate	Total Lodestar
PARTNERS:											
Keith S. Dubanevich	14	372.1	231.15	175.4	36.95	159.9	237.15	101.95	1328.6	\$635	\$843,661.00
Steve D. Larson	.4	0	0	0	0	0	0	0	0.4	\$650	\$ 260.00
Timothy S. DeJong	0	.2	0	0	0	0	0	0	0.2	\$605	\$ 121.00
Steven C. Berman	0	5.3	0	0	0	0	.9	0	6.2	\$525	\$ 3,255.00
ATTORNEYS:											
Jacob S. Gill	19.5	11.1	13.5	0	0	0	11	11	66.1	\$385	\$ 25,448.50
Cody Berne	1.8	1073.1	299.2	201.3	48.2	77	260.4	14.3	1975.3	\$415	\$819,749.50
Lydia Anderson-Dana	0	0	0	0	0	0	.3	0	0.3	\$415	\$ 124.50
Megan K. Houlihan	0	146.3	0	0	0	18.1	29.8	0	194.2	\$415	\$ 80,593.00
Elizabeth K. Bailey	0	14.6	0	0	23.2	0	1.6	0	39.4	\$415	\$ 16,351.00
Sophie von Bergen	0	66.2	0	0	0	0	2.2	0	68.4	\$325	\$ 22,230.00
PROFESSIONAL SUPPORT STAFF:											
Jason Dotts (paralegal)	0	0	13.1	0	0	0	.3	0	13.4	\$290	\$ 3,886.00
Angelene Falconer (paralegal)	0	.9	1.2	0	0	3	1	0	6.1	\$290	\$ 1,769.00
Margarita Fortner (paralegal)	0	.7	151.1	0	0	0	.3	0	152.1	\$290	\$ 44,109.00
Wes Mueller (paralegal)	0	63.4	571.15	5.6	15.3	10	12.4	0	677.85	\$290	\$196,576.50
TOTAL LODESTAR	35.7	1753.9	1280.4	382.3	123.65	268	557.35	127.25	4528.55		\$2,058,134.00

CATEGORIES

- a. Case Assessment, Pre-Filing Investigation, Initial Complaint
- b. Briefs, Motions, Pleadings and Research
- c. Discovery and Post-Filing Investigation
- d. Class Certification

- e. Experts & Consultants
- f. Court Appearances & Preparation
- g. Conferences, Interviews, Telephone Calls, Meetings & Correspondence
- h. Settlement

Exhibit 1

Exhibit 2

Joint Declaration in Support of Motion for Final Approval and Award of Attorney Fees and Costs and Service Awards to Plaintiffs

Stoll Berne
Costs through May 1, 2021

<u>Categories:</u>	<u>Amount</u>
Photocopies/Reproduction	\$ 0.00
Postage/Notice Costs	\$ 1,303.40
Telephone	\$ 148.94
Messengers/Express Services	\$ 517.62
Filing/Witness Fees	\$ 4,858.00
Court Reporters/Transcript/Video	\$38,861.15
Computer Research (Lexis, Pacer, etc.)	\$ 248.80
Experts/Consultants/Professional Services	\$45,681.08
Document and Data Management Expenses	\$ 725.21
Mediation	\$10,000.00
Out-of-Town Meals/Hotel/Transportation	\$ 1,670.63
Facsimile Charges	\$ 0.00
TOTAL EXPENSES:	\$104,014.83

Exhibit 2

Exhibit 2

Joint Declaration in Support of Motion for Final Approval and Award of Attorney Fees and Costs and Service Awards to Plaintiffs

Page 7 of 23

Stoll Berne

Keith Dubanevich Attorney

Telephone: (503) 227-1600
Direct: (503) 972-7120
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Portland, Oregon 97204
✉ kdubanevich@stollberne.com
📄 Download Vcard
in LinkedIn



Keith is an accomplished trial, appellate, and healthcare lawyer with over 35 years of experience in more than a dozen different jurisdictions around the country. With a focus on complex dispute resolution, with particular emphasis in the healthcare industry, Keith is adept at handling multi-state and international antitrust cases, consumer litigation, and securities disputes. In healthcare, he has handled peer review disputes, partnership and incorporation matters, and billing investigations.

Keith's clients value his keen instincts in court and his ability to delve into complex legal issues while never losing sight of the overall strategy of a case. A judge commented that during a recent trial Keith was "remarkably thorough, ... prepared, respectful, and efficient." Keith has also received high praise from his peers including this comment about a recent arbitration proceeding: "I was so impressed with your professionalism and effectiveness. Your whole presentation was a model of what an advocate should be."

During his time at the Oregon Department of Justice as Associate Attorney General and Chief of Staff, Keith led the creation of a civil rights unit, managed securities litigation including multiple cases against financial services companies, and supervised antitrust investigations and prosecutions. He was also involved with the adoption of legislation that expanded the Unlawful Trade Practices Act to include financial services companies.

EDUCATION

Tulane University School of Law, J.D., *cum laude*, 1983

Moot Court Board

Louisiana Trial Lawyers Award for Outstanding Advocacy

Order of the Barristers

Northeastern University, B.S., Public Administration, with high honors, 1980

A.A. White Dispute Resolution Center, Mediation Certificate, 1997

ADMITTED TO PRACTICE

Oregon State Bar, 1998
Texas State Bar, 1983
U.S. District Court, Oregon
U.S. District Court, Connecticut
U.S. District Court, Northern Florida
U.S. District Court, Southern New York
U.S. District Court, Southern Texas
U.S. District Court, Eastern Texas
U.S. District Court, Western Wisconsin
U.S. Court of Appeals, Second Circuit
U.S. Court of Appeals, Fifth Circuit
U.S. Court of Appeals, Ninth Circuit
U.S. Supreme Court
Massachusetts, 1990 (Inactive)

PROFESSIONAL EXPERIENCE

Stoll Berne
Shareholder, 2012-present

Oregon Department of Justice
Associate Attorney General and Chief of Staff, 2012-2012
Chief of Staff and Special Counsel, 2009-2012
Special Counsel, 2009

Garvey Schubert Barer
Shareholder, 1998-2008

Fulbright & Jaworski L.L.P. (Houston, Texas)
Partner, 1992-1998
Associate, 1983-1988, 1989-1992

Hale & Dorr (Boston, Massachusetts)
Associate, 1988-1989

PROFESSIONAL ACTIVITIES

Oregon Law Commission
Commissioner, 2016-present

Oregon State Bar
Antitrust and Trade Regulation Section Executive Committee, Chair, 2018; Chair-elect, 2017; 2015-present
Business Litigation Section Executive Committee, 2002-2009; Chair, 2008; Chair-elect, 2007; Treasurer, 2007; Secretary, 2006

American Bar Association
Antitrust and Litigation Sections, Member

COMMUNITY ACTIVITIES

Children's Cancer Association
Legal Advisor, 2017-present

Mazamas Mountaineering Association
Board of Directors, Chair, 2007

Hoyt Arboretum Friends
Board of Directors, 2012-2017; President, 2013-2017

PRESENTATIONS

"Wait Wait ... Don't Settle! The Vital Pre-Settlement Role of a Settlement Administrative Expert," Epiq & HB Litigation Conference, Virtual (April 2021)

"Deposing the Organization," Multnomah Bar Association CLE, Portland, Oregon (March 2020)

"Proportionality in Practice," Oregon State Bar Business Litigation Section CLE, Portland, Oregon (September 2017)

"Oregon Public Employee Retirement Fund v. Marsh & McLennan: Lessons Learned," Oregon State Bar Business Litigation Section CLE, Portland, Oregon (May 2017)

"Telephone Consumer Protection Act," Oregon Trial Lawyers Association, Portland, Oregon (May 2014)

"US Supreme Court Update: Chadbourne & Parke v. Troice; Mississippi v. Au Optronics; and Halliburton v. Erica John Fund. What's changed and what's coming up next session." Oregon State Bar Securities Regulation Section CLE, Portland, Oregon, (June 2014)

PUBLICATIONS

"Presidential Tweets, Yelp Reviews, FREE BOOZY, and Admissibility," OSB Litigation Journal (Fall 2017)

"Class Arbitration: Permissible? Preventable? Who Gets to Decide?" 26 Oregon State Bar Litigation Journal 3 (2007)

"Jurisdiction: In Personam and In Rem," 1 Oregon Civil Pleading and Practice Chapter 2 (2006)

"Personal Jurisdiction in a Virtual World," Texas Bar Journal, February 2003

"A Brief Introduction to Product Liability Law in the United States," China Chamber of Commerce for Machinery and Electronics News Report, 3rd Issue, 2002

"Minimizing Exposure – Personal Jurisdiction in the Silicon Forest," 62 Oregon State Bar Bulletin 21 (December 2001)

"You Can Advertise, But Don't Sell That Product: Virtual Jurisdiction in Washington," Washington Law Journal, June 2001

"Personal Jurisdiction in the Silicon Forest," Oregon Law Journal, June 2001

"Health Care Litigation and Confidentiality – Unique Discovery Issues," Oregon Health Law (Summer 2000)

"State by State Guide to Managed Care Law," Oregon, Aspen Publishing (1999, 2000, 2001)

"Qui Tam Suits," Oregon Health Law (Winter, 1998/1999)

"Whistle-Blower Reward Programs Signal the Need to Accelerate Compliance Efforts," Patient Accounts, Healthcare Financial Management Association (August 1998)

PERSONAL

Keith is an avid runner, skier, and cyclist. In his spare time, he enjoys cooking with his wife and family.

AWARDS

Benchmark Litigation

Local Litigation Star, 2015-2021

Martindale Hubbell

AV* Rated

Oregon Super Lawyers

2006-2009; 2014-2020

The Best Lawyers in America®

2014-2021

Lawyer of the Year, Portland: Litigation – Antitrust, 2020

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Stoll Berne

Cody Berne Attorney

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✉ cberne@stollberne.com
📄 Download Vcard
in LinkedIn



Cody Berne is an attorney at Stoll Berne in Portland. Cody's practice focuses on representing investors who lost money because of fraud and other misconduct, class actions, and business litigation. He is a member of the Public Investors Advocate Bar Association and the Oregon Trial Lawyers Association.

Cody previously worked as a deputy district attorney at the Multnomah County District Attorney's Office where he tried over 30 trials to verdict. Before that, Cody represented individuals and businesses in cases involving investment fraud and a wide range of business disputes at a large Portland firm.

He received the Haglund Award in 2016 from the Multnomah Bar Association and was named in The Best Lawyers in America in 2020.

During law school, Cody interned for U.S. District Court Judge Kimberly Mueller and U.S. Magistrate Judge Carolyn Delaney. Elected to Order of the Coif, he received the Clinical Legal Education Association Award and a Witkin Award. Cody also represented clients as a law student at the Civil Rights Clinic and Prison Law Clinic and earned a Public Service Certificate.

Before law school, Cody worked as a police officer with the Portland Police Bureau and as a wildland firefighter.

[Investor Blog](#)

Exhibit 3
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Exhibit 2

EDUCATION

UC Davis School of Law, J.D., Order of the Coif, 2014

Pomona College, B.A., Politics, 2003

ADMITTED TO PRACTICE

Oregon State Bar, 2014

U.S. District Court, Oregon

U.S. Court of Appeals, Ninth Circuit

PROFESSIONAL EXPERIENCE

Stoll Berne

Associate, 2017-present

Multnomah County District Attorney

Deputy District Attorney, 2016-2017

Miller Nash Graham & Dunn LLP

Associate, 2014-2016

Hon. Kimberly Mueller (U.S. District Court, Eastern District of California)
Intern, 2012

Hon. Carolyn Delaney (U.S. District Court, Eastern District of California)
Intern, 2012

Portland Police Bureau

Police Officer, 2005-2011

Diamond Mountain Interagency Hotshots

Wildland Firefighter, 2004

PROFESSIONAL ACTIVITIES

FINRA

Arbitrator, 2020-present

Legal Aid Services of Oregon

Volunteer, Domestic Violence Project, 2015-2016

National Futures Association (NFA)

Arbitrator, 2021-present

Oregon State Bar

Antitrust Section, Member

Securities Regulation Section, Member, 2017-present; Executive Committee, 2021-present

Oregon Trial Lawyers Association

Legislative Committee Member, 2020-present

Public Investors Advocate Bar Association (PIABA)

Member

PUBLICATIONS

"[Investor Blog](#)," *Stoll Berne*, 2020-present

"Costs, Disbursements, and Attorney Fees," author, *Oregon Civil Pleading and Litigation*, 2020

"After the Supreme Court's Decision in *China Agritech*, a Plaintiff Who Seeks to Represent a Class Should Not Wait to File," *Oregon State Bar Litigation Journal*, Summer 2020

"Common Claims of Oregon Investors Who Are the Victims of Fraud or Other Financial Misconduct," *Stoll Berne*, January 2019

"Contracts for the Sale of Goods," co-author, OSB Legal Publications CLE, *Damages*, 2016

"Don't Take Your Guns to Town," *Oregon State Bar Bulletin*, October 2015

"Liabilities under State Statutory and Common Law: Blue Sky Laws," 2014 *Broker-Dealer Litigation Annual Survey*, Securities Litigation Committee of the America Bar Association

PRESENTATIONS

"How Plaintiff's Lawyers Evaluate an Investor Fraud Case," Deschutes County Bar Association CLE, Bend, Oregon (March 2019)

AWARDS

Multnomah Bar Association
Haglund Award, 2016

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2020-2021

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Exhibit 2

Stoll Berne

Meg Houlihan

Attorney

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Fax: (503) 227-6840
209 SW Oak Street, Suite 500
Portland, Oregon 97204
✉ mhoulihan@stollberne.com



Meg is an associate in the firm's litigation group where she focuses on complex litigation matters. Prior to joining Stoll Berne, Meg was an associate in another Portland law firm and also had served as a judicial law clerk for the Honorable Morgan Christen (U.S. Court of Appeals, Ninth Circuit) and the Honorable Michael Simon (U.S. District Court, District of Oregon). During her clerkships, Meg was able to provide legal research for both civil and criminal matters and worked on several trials. Her previous law firm experience included a lien dispute for former police officers as well as a civil RICO matter in federal court, and a federal jury trial on behalf of a hospital.

EDUCATION

Yale Law School, JD, 2015
Teaching Fellow

Trial Advocacy Team Member

Submissions Editor for Yale Law & Policy Review

Environmental Protection Clinic Member

Gonzaga University, *summa cum laude*, B.A., Political Science and History Majors, 2010

ADMITTED TO PRACTICE

Oregon State Bar, 2016

Washington State Bar, 2018

PROFESSIONAL EXPERIENCE

Stoll Berne

Associate, 2020-present

Tonkon Torp

Associate, 2017-2020

The Honorable Morgan Christen (U.S. Court of Appeals, Ninth Circuit)

Law Clerk, 2016-2017

The Honorable Michael Simon (U.S. District Court, District of Oregon)

Law Clerk, 2015-2016

Munger, Tolles & Olson, LLP (Los Angeles)

Summer Associate, Summer 2014

King County Prosecutor's Office (Seattle)

Extern, Summer 2013

PROFESSIONAL ACTIVITIES

Multnomah Bar Association

Member

Oregon State Bar

Member

Owen M. Panner American Inn of Court

Member

COMMUNITY ACTIVITIES

St. Mary's Academy

Mock Trial Coach, 2018-present

PERSONAL

You may find Meg during her off time running, hiking, or participating in all the Pacific Northwest outdoor adventures.

AWARDS

Oregon State Bar President's Special Award of Appreciation

2019

Oregon Super Lawyers

2020, Rising Star

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Exhibit 3
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Exhibit 2



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Exhibit 3
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Exhibit 2
Support of Motion for Final Approval and Award of Attorney Fees and Costs and Service
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A BELIEF IN SOCIAL RESPONSIBILITY

Stoll Berne gives back to its community. Every year, the firm donates a generous percentage of gross revenues to charitable causes. We are a major contributor to the Lawyers' Campaign for Equal Justice, which provides legal services funding to low-income Oregonians. Many of our lawyers donate their time to pro bono legal work, including representing seniors, indigent clients and migrant workers. Our community partners include Self Enhancement, Inc., Community Cycling Center, Ronald McDonald House of Oregon and Southwest Washington, Hoyt Arboretum Friends, CASA, Hands on Portland and Oregon Food Bank. We also participate in charitable fundraising and coach high school mock trial teams.

PERSONAL INTEGRITY AND PROFESSIONAL EXCELLENCE

Our attorneys are selected for their personal integrity, sound judgment and superior academic achievement. Many of our lawyers finished at or near the top of their class at the nation's premier law schools, and continue to receive professional honors and accolades. We are consistently peer-rated as among the best lawyers in Oregon, and frequently cited for our publishing in professional journals. Our lawyers are regularly invited to professional speaking engagements.

Exhibit 3

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Exhibit 2

A PRACTICAL ATTITUDE TOWARD PREVENTING AND RESOLVING DISPUTES

Stoll Berne represents individuals, small and large corporations, financial institutions, and government entities. Our clients, from individuals and closely held corporations to Fortune 500 companies, all have one thing in common – they seek exceptional legal representation. By choosing to concentrate our practice on focused areas of expertise, we offer our clients the opportunity for continued success.

KEY PRACTICE AREAS:

Securities/Investor/Broker Litigation

We regularly represent plaintiffs/claimants and defendants/respondents in cases involving stocks, bonds, limited partnerships and other investment vehicles, disputes between stockbrokers and customers (e.g., misrepresentation and suitability claims), and claims for management malfeasance at the expense of shareholders or investors. Our clients include both individual and institutional investors, as well as defendants, in financial fraud class actions.

Business Litigation

Whether our clients initiate or are defendants in litigation, we aggressively represent them to obtain the best results. We are regularly retained in “bet the company” litigation and are experienced in state and federal courts and arbitrations. Our clients turn to us for assistance with a variety of business matters such as contract, breach of fiduciary duty, fraud, real estate, employment and professional malpractice disputes.

Class Action Litigation

We have represented many types of class members in a variety of class actions including: employees in wage and hour class actions; businesses damaged by environmental spills; health care providers and the disabled in class actions for reimbursement of health care costs; investors in securities fraud class actions; and consumers in cases involving improper fees, deception, and price fixing.

Exhibit 3

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Exhibit 2



Real Estate Law

Our real estate lawyers regularly represent clients in the purchase and sale of real estate, real estate financings (including mezzanine loans), development of real property, development incentives, capital formation (including private placements and joint venture equity arrangements), leasing, tax-deferred property exchanges, affordable housing, condominiums, and disposition and development agreements with local municipalities.

Patent/Trademark/Intellectual Property Litigation

We represent parties in all aspects of intellectual property litigation, including disputes involving patents, trademarks, trade secrets, copyrights, false advertising, unfair competition, defamation and medical research practice. We are frequently consulted by patent and trademark counsel when litigation develops and often are asked to serve as trial counsel.

Business Transactions/Corporate Law

We represent and advise clients on business formations, capital formation, financing, licensing, leasing, executive compensation, employment law, corporate governance, business succession planning, equity owner retirements, tax planning and regulatory compliance.

Antitrust and Unfair Trade Practices

We represent U.S. and international companies and consumers in all aspects of antitrust litigation. Our antitrust experience includes trials in state and federal court and in arbitration. We have litigated cases involving allegations of price-fixing, customer allocation, market division, price discrimination, tying or bundling related products, and unfair or deceptive trade practices.

Learn more about our areas of practice at
stollberne.com

Exhibit 3
 Page 12 of 16

Exhibit 2

WHO WE ARE

Deeply rooted in the Northwest and nationally recognized for over 35 years, Stoll Berne has produced extraordinary results through practical, strategic and tenacious representation. We are proud that more than half of our client list originates from referrals by satisfied clients and peers. We keep our firm small in order to provide efficient services in specialized areas in which we have significant experience.



Exhibit 3

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Exhibit 2



CONTACT US



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Portland, Oregon 97204



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Exhibit 3
Page 14 of 16

Stoll Berne

Class Actions

We have earned our reputation as the leading plaintiffs' class actions firm in Oregon. We have litigated securities fraud class actions on behalf of investors. We have represented employees in class actions involving wage and hour claims. We have represented consumers in consumer protection class actions and in antitrust cases. We have represented injured people and businesses in environmental class actions. We have also represented health care providers seeking to recover proper reimbursement in class actions against insurance companies. Our class actions practice fights to level the playing field and find justice.



Protecting Your Rights is Our Business

To learn more about us and our class actions practice, please watch the video to the left.

To visit our [Class Actions Blog](#), click [here](#). If you would like to receive emails with our latest blog posts, you may sign up directly on the blog or simply send us an email via our [Contact Us](#) page with the request.

We Amplify Your Voice When You Feel Voiceless



Fighting to Level the Playing Field and Find Justice

Tell us about your case

Please contact us for a no-cost, no-obligation, strictly confidential consultation.

Get Started

Class Actions Attorneys



Lydia Anderson-Dana
Attorney



Steven Berman
Attorney



Cody Berne
Attorney



Gary Berne
Attorney & Founder



Timothy DeJong
Attorney



Keith Dubanevich
Attorney



Emily Johnson
Attorney



Keith Ketterling
Co-Managing Attorney



Steve Larson
Attorney



Keil Mueller
Attorney



Yoona Park
Attorney



Joshua Ross
Attorney



Jen Wagner
Co-Managing Attorney



Sophie von Bergen
Attorney

stollberne.com

Stoll Berne
209 SW Oak Street Suite 500
Portland, OR 97204

(503) 227-1600

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

McKENZIE LAW FIRM, P.A., and OLIVER
LAW OFFICES, INC. on Behalf of
Themselves and All Others Similarly
Situating,

Plaintiffs,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

CASE NO. 3:18-CV-01921-SI

**DECLARATION OF LAURENCE D. KING IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF
OF KAPLAN FOX & KILSHEIMER LLP**

I, Laurence D. King, declare as follows:

1. I am a partner of the law firm of Kaplan Fox & Kilsheimer LLP ("Kaplan Fox").

I submit this declaration in support of Class Counsel's application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by my firm in connection with this class action litigation, including both this Federal Action and a parallel action in the Circuit Court of the State of Oregon. I have personal knowledge of the matters set forth herein based upon my active supervision and participation in all material aspects of the litigation.

2. My firm acted as counsel for plaintiffs and appointed as Class Counsel in this Federal action, as well as counsel for plaintiff in the parallel action pending in Circuit Court of

the State of Oregon, Multnomah County. My firm has extensive class action experience. The firm represents individuals, small businesses, institutional and individual investors/shareholders and employees in class action cases litigated in the United States. My firm has frequently served as sole lead-counsel, as co-lead counsel, or on an executive committee in numerous class actions, including cases such as this one brought on behalf of consumers for more than 50 years.

3. The work done in this case by Plaintiffs' Counsel is described in detail in the Joint Declaration in Support of the Motion for Final Approval and Award of Attorneys' Fees and Costs and Service Awards to Plaintiffs ("Joint Declaration"), which is being filed concurrently with this declaration.

4. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time, by category, spent by the partners, other attorneys, and professional support staff of my firm who were involved in this litigation, and the lodestar calculation based on my firm's current billing rates.¹ The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm, which are available at the request of the Court for review *in camera*.² Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

5. The hourly rates for the partners, other attorneys, and professional support staff in my firm included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been used in the lodestar cross check accepted by courts in other class litigation.

¹ This application does not include time for anyone who spent fewer than 5 hours on this litigation.

² These records may include information concerning privileged and/or confidential attorney-client communications or work product.

6. As of April 30, 2021 the total number of hours expended on this litigation by my firm is 1857.8 hours. The total lodestar based on the law firm's current rates is \$1,290,940.50.

7. My firm's work on this matter touched upon all aspects of this litigation from its inception in July 2017 and is described in detail in the Joint Declaration which is being filed concurrently with this Declaration.

8. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in my firm's billing rates.

9. I have general familiarity with the range of hourly rates typically charged by plaintiffs' class action counsel in the district where my firm is located and throughout the United States, both on a current basis and historically. From that basis I am able to conclude that the rates charged by my firm are commensurate with those prevailing in the market for such legal services furnished in complex class action litigation, such as this. The hourly rates of Kaplan Fox are reasonable is bolstered by the following authorities and evidence:

- (a) These rates are those normally offered and charged to clients for non-contingent work and have not been altered to account for the contingent nature of this litigation or the delay in payment.
- (b) These rates have been deemed reasonable in connection with the approval of my firm's fee applications in recent matters.
- (c) The hourly rates are commensurate with what other lawyers of similar experience charge, as acknowledged by courts in the 9th Circuit and elsewhere.

10. As detailed in Exhibit 2, my firm has incurred a total of \$204,130.18 in unreimbursed expenses in connection with the prosecution of this litigation.

11. The expenses incurred in this action are reflected on the books and records of my firm, which are available at the request of the Court. These books and records are prepared from

expense vouchers, check records and other source materials and are an accurate record of the expenses as charged by the vendors. Third-party expenses are not marked up. Upon request, we will provide the Court with copies of documentation for each of the costs itemized above.

12. By agreement between Plaintiffs' Counsel, my firm is not charging separately for the following costs and expenses: secretarial and clerical overtime, including their meals and local transportation; after-hours HVAC; word processing; secretarial/clerical time for document preparation; time charges for routine copying, faxing or scanning; incoming/outgoing fax charges; office supplies (such as paper, binders, etc.); special publications; continuing legal education seminars; working meals for attorneys (with the exception of meals with clients, expert or other witnesses, or meal expenses for meetings between Plaintiffs' Counsel); and local overtime meals and transportation for attorneys.

13. With respect to the standing of counsel in this case, attached hereto as Exhibit 3 is my firm's résumé and brief biographies for the attorneys in my firm who were principally involved in this litigation.

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

Executed on this 10th day of May, 2021.



Laurence D. King

EXHIBIT 1***MCKENZIE LAW FIRM, P.A. v. RUBY RECEPTIONISTS, INC******MAIDEN v. RUBY RECEPTIONISTS, INC.*****Kaplan Fox & Kilsheimer LLP****TIME REPORT — Inception through April 30, 2021**

Name	A	B	C	D	E	F	G	H	Total Hours	Hourly Rate	Total Lodestar
PARTNERS:											
Laurence D. King	18.2	53.1	12.6	46.7	109.0	56.7	53.1	132.8	482.2	940.00	\$453,268.00
ATTORNEYS:											
Mario M. Choi	4.1	234.8	327.2	32.2	72.0	22.7	39.8	11	743.8	725.00	\$539,255.00
Matthew George	1.5	33.0	103.9	18.4	1.8		8.4	2.4	169.4	775.00	\$131,285.00
Linda M. Fong	17.4		5.0				.5		22.9	635.00	\$14,885.00
Walter Howe		32.0	26.1						58.1	425.00	\$24,692.50
Deidre Roney			208.6						208.6	350.00	\$73,010.00
PARAPROFESSIONAL STAFF:											
Kevin Cosgrove			108.3				7.2		115.5	335.00	\$38,692.50
Mandrika Moonsammy			17.5						17.5	335.00	5,862.50
Susan Powley	.8	17.0	2.5		1.5	7.0	.5	.2	29.5	295.00	\$8,702.50
Nikki Lee		1.4	8.9						10.3	125.00	\$1,287.50
TOTAL LODESTAR											
	42.0	371.3	820.6	97.3	184.3	86.4	109.5	146.4	1857.8		\$1,290,940.50

CATEGORIES

- a. Case Assessment, Pre-Filing Investigation, Initial Complaint
- b. Briefs, Motions, Pleadings and Research
- c. Discovery and Post-Filing Investigation
- d. Class Certification, Notice Issues, Decertification
- e. Experts & Consultants
- f. Court Appearances & Preparation
- g. Conferences, Interviews, Telephone Calls, Meetings & Correspondence
- h. Mediation & Settlement

Exhibit 1

Exhibit 3

Joint Declaration in Support of Motion for Final Approval and Award of Attorney Fees and Costs and Service Awards to Plaintiffs

EXHIBIT 2***MCKENZIE LAW FIRM, P.A. v. RUBY RECEPTIONISTS, INC******MAIDEN v. RUBY RECEPTIONISTS, INC.*****Kaplan Fox & Kilsheimer LLP****EXPENSE REPORT — Inception through April 30, 2021**

<u>Categories:</u>	<u>Amount</u>
Photocopies/Reproduction	
Postage/Notice Costs	\$3,243.27
Telephone	
Messengers/Express Services	\$386.06
Filing/Witness Fees/ <i>Pro-Hac Vice</i> Fees	\$3,090.00
Court Reporters/Transcript/Video	\$6,768.15
Computer Research (Lexis, Pacer, etc.)	\$21,745.71
Experts/Consultants/Professional Services	\$158,183.25
Document and Data Management Expenses	
Mediation	
Out-of-Town Meals/Hotel/Transportation	\$10,713.74
TOTAL EXPENSES:	\$204,130.18

NEW YORK, NY

LOS ANGELES, CA

Exhibit 2

OAKLAND, CA

CHICAGO, IL

WASHINGTON, D.C.

MORRISTOWN, NJ

Exhibit 3

EXHIBIT 3

[FIRM RESUME AND ATTORNEY BIOGRAPHIES]



KAPLAN FOX & KILSHEIMER LLP

FIRM PROFILE

850 Third Avenue, 14th Floor
New York, NY 10022
Tel.: 212.687.1980
Fax: 212.687.7714

681 Prestwick Lane
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Tel.: 847.831.1585
Fax.: 847.831.1580

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Suite 1560
Oakland, CA 94612
Tel.: 415.772.4700
Fax: 415.772.4707

12400 Wilshire Boulevard,
Suite 820
Los Angeles, CA 90025
Tel.: 310.575.8604
Fax: 310.444.1913

6109 32nd Place, NW
Washington, DC 20015
Tel.: 202.669.0658

160 Morris Street
Morristown, NJ 07960
Tel.: 973.656.0222
Fax: 973.401.1114

History of Kaplan Fox & Kilsheimer LLP

Leo Kaplan and James Kilsheimer founded “Kaplan & Kilsheimer” in 1954, making the firm one of the most established litigation practices in the country. James Kilsheimer was a celebrated federal prosecutor in the late 1940s and early 1950s in New York who not only successfully tried some of the highest profile cases in the country, but also handled the U.S. Attorney’s Office’s criminal appeals to the Second Circuit.

Now known as “Kaplan Fox & Kilsheimer LLP,” the early commitment to high-stakes litigation continues to define the firm to the present day. In 2009, Portfolio Media’s *Law360* ranked Kaplan Fox’s securities litigation practice as one of the top 5 in the country (plaintiff side), and again in July 2014, the Legal 500 ranked Kaplan Fox as one of the top eight plaintiff’s firms for securities litigation. In March 2013, the *National Law Journal* included Kaplan Fox on its list of the top 10 “hot” litigation boutiques, a list that includes both plaintiff and defense firms. In 2014, 2015 and 2016, more than half of the firm’s partners – including attorneys on both coasts – were rated “Super Lawyers.”

The firm has three primary litigation practice areas (antitrust, securities, and consumer protection), and the firm is a leader in all three. To date, we have recovered more than **\$5 billion** for our clients and classes. In addition, the firm has expanded its consumer protection practice to include data privacy litigation, and few other firms can match Kaplan Fox’s recent leadership in this rapidly emerging field. The following describes Kaplan Fox’s major practice areas, its most significant recoveries and its attorneys.

Securities Litigation

Over the past 35 years, Kaplan Fox has been a leader in prosecuting corporate and securities fraud —ranging from cases concerning accounting fraud to those involving complicated and complex financial instruments. Since the passage of the Private Securities Litigation Reform Act in 1995, Kaplan Fox has emerged as one of the foremost securities litigation firms representing institutional investors of all sizes, including many of the world's largest public pension funds.

Kaplan Fox's selection by Portfolio Media's Law360 as one of the five top securities litigation firms (plaintiff side) for 2009 was based, in part, on the representation of public pension funds in high profile and complex securities class actions. Some of the firm's most significant securities recoveries include:

In re Bank of America Corp. Securities, Derivative, and ERISA Litigation, MDL No. 2058 (S.D.N.Y.) (\$2.425 billion recovered)

In re Merrill Lynch & Co., Inc. Securities Litigation, Master File No. 07-CV-9633 (JSR) (S.D.N.Y.) (\$475 million recovered)

In re 3Com Securities Litigation, No. C-97-21083-EAI (N.D. Cal.) (\$259 million recovered)

In re Fannie Mae 2008 Securities Litigation, No. 08-cv-7831 (PAC) (S.D.N.Y.) (\$170 million recovered)

In re MicroStrategy Securities Litigation, No. CV-00-473-A (E.D. Va.) (\$155 million recovered)

AOL Time Warner Cases I & II (Opt-out), Nos. 4322 & 4325 (Cal. Superior Court, LA County) (\$140 million recovered)

In re Informix Securities Litigation, C-97-129-CRB (N.D. Cal.) (\$136.5 million recovered)

In re Xcel Energy, Inc. Securities Litigation, Master File No. 02-CV-2677-DSD (D. Minn.) (\$80 million recovered)

In re Elan Corporation Securities Litigation, No. 02-CV-0865-RMB (S.D.N.Y.) (\$75 million recovered)

In re Sequenom, Inc. Securities Litigation, No. 09-cv-921 (S.D. Cal.) (\$70 million recovered)

Barry Van Roden, et al. v. Genzyme Corp., et al., No. 03-CV-4014-LLS (S.D.N.Y.) (\$64 million recovered)

Antitrust Litigation

Kaplan Fox has been at the forefront of significant private antitrust actions, and we have been appointed by courts as lead counsel or members of an executive committee for plaintiffs in some of the largest antitrust cases throughout the United States. This commitment to leadership in the antitrust field goes back to at least 1967, when firm co-founder Leo Kaplan was appointed by the Southern District of New York to oversee the distribution of all ASCAP royalties under the 1950 antitrust consent decree in **United States v. American Society of Composers, Authors and Publishers**, No. 41-CV-1395 (S.D.N.Y.), a role he held for 28 years until his death in 1995. To this day, ASCAP awards the “Leo Kaplan Award” to an outstanding young composer in honor of Leo’s 28 years of service to ASCAP.

Members of the firm have also argued before the U.S. Courts of Appeals some of the most significant decisions in the antitrust field in recent years. For example, Robert Kaplan argued the appeal in **In re Flat Glass Antitrust Litigation**, 385 F.3d 350 (3d Cir. 2004), and Greg Arenson argued the appeal in **In re High Fructose Corn Syrup Antitrust Litigation**, 295 F.3d 651 (7th Cir. 2002). In a relatively recent survey of defense counsel, in-house attorneys, and individuals involved in the civil justice reform movement, both were named among the 75 best plaintiffs’ lawyers in the country based on their expertise and influence.

Over the years, Kaplan Fox has recovered over **\$2 billion** for our clients in antitrust cases. Some of the larger antitrust recoveries include:

In re Air Cargo Shipping Services Antitrust Litigation, MDL 1775 (E.D.N.Y.) (settled during trial preparation, for total settlement of more than \$1.25 billion)

In re Neurontin Antitrust Litigation, MDL No. 1479, Master File No. 02-1390 (D.N.J.) (\$190 million recovered)

In re High Fructose Corn Syrup Antitrust Litigation, MDL No. 1087, Master File No. 95-1477 (C.D. Ill.) (\$531 million recovered)

In re Brand Name Prescription Drugs Antitrust Litigation, MDL 997 (N.D. Ill.) (\$720 plus million recovered)

In re Infant Formula Antitrust Litigation, MDL 878 (N.D. Fla.) (\$126 million recovered)

In re Flat Glass Antitrust Litigation, MDL 1200 (W.D. Pa.) (\$122 plus million recovered)

In re Hydrogen Peroxide Antitrust Litigation, MDL 1682 (E.D. Pa.) (\$97 million recovered)

In re Plastics Additives Antitrust Litigation, 03-CV-1898 (E.D. Pa.) (\$46.8 million recovered)

In re Medical X-Ray Film Antitrust Litigation, CV 93-5904 (E.D.N.Y.) (\$39.6 million recovered)

In re NBR Antitrust Litigation, MDL 1684 (E.D. Pa.) (\$34.3 million recovered)

Consumer Protection and Data Privacy Litigation

The consumer protection practice is headquartered in Kaplan Fox's Bay Area office, which opened in 2000, and is led by Laurence King, an experienced trial lawyer and former prosecutor.

Mr. King and our other effective and experienced consumer protection litigators regularly champion the interests of consumers under a variety of state and federal

consumer protection laws. Most frequently, these cases are brought as class actions, though under certain circumstances an individual action may be appropriate.

Kaplan Fox's consumer protection attorneys have represented victims of a broad array of misconduct in the manufacturing, testing, marketing, and sale of a variety of products and services and have regularly been appointed as lead or co-lead counsel or as a member of a committee of plaintiffs' counsel in consumer protection actions by courts throughout the nation. Among its significant achievements are highly recognized cases including **In re Baycol Products Litigation**, MDL 1431-MJD/JGL (D. Minn.) (victims have recovered \$350 million recovered); **In re: Apple Inc. Device Performance Litigation**, No. 5:18-md-02827-EJD (N.D. Cal.) (\$310 million settlement for diminished performance of iPhone 6s and iPhone 7s running certain Apple iOS software); **In re Providian Financial Corp. Credit Card Terms Litigation**, MDL No. 1301-WY (E.D. Pa.) (\$105 million recovered); **In re Thomas and Friends Wooden Railway Toys Litig.**, No. 07-cv-3514 (N.D. Ill.) (\$30 million settlement obtained for purchasers of recalled "Thomas Train" toys painted with lead paint); **In re Pre-Filled Propane Tank Marketing and Sales Practices Litigation**, No. 4:09-md-2086 (W.D. Mo.) (settlements obtained where consumers will receive substantially in excess of actual damages and significant injunctive relief); **Berry v. Mega Brands Inc.**, No. 08-CV-1750 (D.N.J.) (class-wide settlement obtained where consumers will receive full refunds for defective products), and **David Wolf, et al. v. Red Bull GmbH, et al.**, No. 1:13-cv-08008 (S.D.N.Y.) (\$13 million settlement fund obtained for purchasers of Red Bull energy drink).

Data privacy is a fairly new area of law and broadly encompasses two scenarios. In a data breach case, a defendant has lawful custody of data, but fails to safeguard it or use it in an appropriate manner. In a tracking case, the defendant intercepts or otherwise gathers digital data to which it is not entitled in the first place.

Kaplan Fox is an emerging leader in both types of data privacy litigation. For example, Mr. King filed and successfully prosecuted one of very first online data breach cases, **Syran v. LexisNexis Group**, No. 05-cv-0909 (S.D. Cal.), and was court-appointed liaison counsel in a recently successfully concluded data breach case against LinkedIn. See **In re: LinkedIn User Privacy Litigation**, No. 12-cv-3088-EJD (N.D. Cal.). The firm also settled a data privacy case against Universal Property & Casualty Insurance Company related to the public exposure of sensitive customer data. See **Rodriguez v. Universal Property & Cas. Ins. Co.**, No. 16-cv-60442-JK (S.D. Fla.).

The firm is also an industry leader in the even newer field of email and internet tracking litigation. Kaplan Fox was appointed Co-Lead Class Counsel in a digital privacy class action against Yahoo!, Inc., related to Yahoo's alleged practice of scanning emails for content, which was recently settled. See **In re: Yahoo Mail Litigation**, 5:13-cv-04980-LHK (N.D. Cal.). Current cases include **In re: Facebook Internet Tracking Litigation**, No. 5:12-md-02314-EJD (N.D. Cal.) (Davila, J.), and **In re: Google Inc. Cookie Placement Consumer Privacy Litig.**, 12-MD-2358-SLR (D. Del.) (Kaplan Fox appointed to plaintiffs' steering committee).

ATTORNEY BIOGRAPHIES

PARTNER

LAURENCE KING first joined Kaplan Fox as an associate in 1994. He became a partner of the firm in 1998. While Mr. King initially joined the firm in New York, in 2000 he relocated to San Francisco to open the firm's first West Coast office. He is now partner-in-charge of the firm's Oakland and Los Angeles offices. In that capacity, he has regularly served as a lead member of the litigation team for Kaplan Fox's California-based institutional investor clients, and is always available at a moment's notice.

Mr. King practices primarily in the areas of securities litigation, with an emphasis on institutional investor representation and consumer protection litigation. He has also

practiced in the area of employment litigation. Mr. King has played a substantial role in cases that have resulted in some of the largest recoveries ever obtained by Kaplan Fox, including *In re Bank of America Securities Litigation* (S.D.N.Y.), *In re 3Com Securities Litigation* (N.D. Ca.), *In re Informix Securities Litigation* (N.D. Ca.), *AOL Time Warner Cases I & II* (Ca. Sup. Ct., L.A. Cty.) and *Providian Credit Card Cases* (Ca. Sup. Ct., S.F. Cty.).

An experienced trial lawyer, prior to joining Kaplan Fox Mr. King served as an assistant district attorney under the legendary Robert Morgenthau in the Manhattan (New York County) District Attorney's Office, where he tried numerous felony prosecutions to jury verdict. At Kaplan Fox, he was a member of the trial team for two securities class actions tried to verdict, *In re Biogen Securities Litigation* (D. Mass.) and *In re Health Management Securities Litigation* (E.D.N.Y.). Mr. King also prepared for numerous cases for trial in which favorable settlements were ultimately achieved.

Mr. King has been selected for inclusion in the Northern California *SuperLawyers* each year since 2012, and has previously served as Vice-Chair, and then as Co-Chair, of the American Association for Justice's Class Action Litigation Group of the American Association for Justice.

Education:

- B.S., Wharton School of the University of Pennsylvania (1985)
- J.D., Fordham University School of Law (1988)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (1989)
- Bar of the State of California (2000)
- U.S. Court of Appeals for the Second, Third, Fifth, Ninth and Tenth Circuits
- U.S. District Courts for the District of New Jersey, Eastern District of Pennsylvania, Southern and Eastern Districts of New York, and Northern, Central and Southern Districts of California

Professional Affiliations:

- Bar Association of San Francisco
- American Bar Association
- American Association for Justice

- San Francisco Trial Lawyers' Association
- American Business Trial Lawyers

Mr. King can be reached by email at: LKing@kaplanfox.com

OF COUNSEL

MATTHEW GEORGE is a complex litigation attorney at Kaplan Fox & Kilsheimer LLP with a practice focused on data privacy, consumer protection, and employment/labor cases. He has significant experience and expertise handling multidistrict litigation and other coordinated proceedings in state and federal courts involving multiple parties and complex discovery issues.

Matthew has been a strong advocate for consumer and patient privacy. He has served on court-appointed lead counsel teams in notable cutting-edge data breach and information privacy cases against Target, Adobe, Yahoo!, and Horizon Healthcare. In these and other cases he has worked with cybersecurity experts to gain technical knowledge in data collection, management and protection. He was recently appointed to the Plaintiffs' Steering Committee in *In re 21st Century Oncology Data Breach Litigation*, MDL No. 2737, pending in the Middle District of Florida.

Matthew has also recovered unpaid overtime wages for thousands of workers across the United States under state and federal law in over a dozen cases. His notable recoveries include generating a \$9.9 million settlement on behalf of retail employees and winning a two-week arbitration representing misclassified account representatives against a Fortune 500 company. Matthew has also recovered over \$10 million for employees in cases alleging violations of the WARN Act when the employees were not provided required notice before their terminations.

He has also represented customers challenging deceptive business practices and has worked to obtain significant recoveries in consumer fraud cases against companies including Chase, Mercedes-Benz and The Ritz-Carlton. He currently represents consumers in cases against HBO, Logitech, and Chipotle, among others. In addition to representing plaintiffs in class action cases, Matthew has also represented institutional clients including labor unions and conducted a risk management analysis for a multi-national health and wellness consumer product corporation.

Matthew has been selected by his peers as a “Rising Star” by Northern California Super Lawyers each year from 2011-2014 and was chosen as a “Super Lawyer” in 2016, the first year he was eligible for the distinction. He has been a regular speaker at industry conventions and seminars on topics ranging from arbitration, expert discovery, settlement strategies, and the rapidly changing field of privacy law.

Education:

- B.A., Political Science and Criminal Justice, *magna cum laude*, Chapman University (2002)
- J.D., The University of Michigan Law School (2005)

Publications and Speaking Engagements:

- Expert Depositions: Promoting Expertise and Limiting Exposure –Bridgeport Continuing Legal Education “Mastering the Deposition” Seminar (January 2017)
- “How Viable Is the Prospect of Private Enforcement of Privacy Rights In The Age of Big Data? An Overview of Trends and developments In Privacy Class Actions” – Competition, The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California, Volume 24, No. 1 (Spring 2015)
- Panel Discussion of Sony Pictures Data Breach Cases – CNBC’s “Squawk On the Street” (December 2014)
- New and Developing Practice Areas – CAOC 53rd Annual Convention (November 2014)
- Privacy Law Symposium – University of California, Hastings College of the La (April 2014)
- Update On the Target Data Breach Litigation – HarrisMartin Target Data Breach MDL Conference (March 2014)
- Consumer Privacy Law – 8th Annual CAOC Class Action Seminar (February 2014)
- Privacy Litigation and Management: Strategies For Protection and Litigation – Bridgeport Continuing Legal Education Seminar (December 2012)
- Class Action Settlement Strategies and Mechanics – 12th Annual Bridgeport Class Action Litigation & Management Conference (April 2012)

- Developments In the Arbitration of Wage and Hour Disputes – Bridgeport 2010 Wage and Hour Conference (October 2010)

Bar Affiliations and Court Admissions:

- Bar of the State of California
- U.S. District Courts for the Northern, Central, Southern and Eastern Districts of California, and the District of Colorado
- Ninth Circuit Court of Appeals

Professional Affiliations:

- Bay Area Lawyers for Individual Freedom
- Consumer Attorneys of California (Diversity Committee)
- American Bar Association (Labor and Employment Section)

Mr. George can be reached by email at: mgeorge@kaplanfox.com

ASSOCIATE

MARIO M. CHOI is a resident in the Oakland office and practices in the areas of securities, antitrust, and consumer protection litigation.

During law school, Mr. Choi interned for the Honorable Bruce M. Selya, U.S. Circuit Judge for the U.S. Court of Appeals for the First Circuit. After law school, Mr. Choi clerked for the Honorable Richard B. Lowe, III, in the Commercial Division of the New York Supreme Court, New York County. Prior to joining the firm, Mr. Choi was an associate with the law firm of Pryor Cashman LLP.

Mr. Choi is actively involved in the community, including serving as a Judge *Pro Tem* for the San Francisco Superior Court and on the boards of various non-profit organizations in the Bay Area. For his work, Mr. Choi was elected a Fellow of the American Bar Foundation.

Education:

- B.A., Boston University
- M.A., Columbia University
- J.D., Northeastern University

Bar Affiliations and Court Admissions:

- Bar of the State of New York

- Bar of the State of California
- U.S. Courts of Appeals for the Eighth and Ninth Circuits
- U.S. District Courts for the Northern, Southern and Central Districts of California and the Southern District of New York

Professional Affiliations:

- American Bar Association
- Asian American Bar Association – Bay Area
- Bar Association of San Francisco
- Federal Bar Association

Mr. Choi can be reached by email at: mchoi@kaplanfox.com

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cberne@stollberne.com
mhoulahan@stollberne.com

Attorneys for Plaintiffs and the Class

[Additional Counsel on Signature Page.]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

McKENZIE LAW FIRM, P.A., and OLIVER
LAW OFFICES, INC. on Behalf of
Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Case No. 3:18-cv-01921-SI

DECLARATION OF ROBERT I. LAX
IN SUPPORT OF MOTION FOR FINAL
APPROVAL AND AWARD OF
ATTORNEYS' FEES AND EXPENSES
AND SERVICE AWARDS TO
PLAINTIFFS

I, Robert I. Lax, declare under penalty of perjury and in accordance with the laws of the State of Oregon and the United States that:

1. I am a member of the law firm of Lax LLP. I submit this declaration in support of Class Counsel's application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by my firm in connection with

this class action litigation, including both this Federal Action and a parallel action in the Circuit Court of the State of Oregon. I have personal knowledge of the matters set forth herein based upon my active supervision and participation in all material aspects of the litigation.

2. My firm acted as counsel for plaintiffs and appointed as Class Counsel in this Federal action, as well as counsel for plaintiff in the parallel action pending in Circuit Court of the State of Oregon, Multnomah County. My firm has extensive class action experience. The firm represents individuals, small businesses, institutional and individual investors/shareholders and employees in class action cases litigated in the United States. My firm has frequently served as sole lead-counsel, as co-lead counsel, or on an executive committee in numerous class actions, including cases such as this one brought on behalf of consumers for more than 25 years.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time, by category, spent by myself and Daniel E. Sobelsohn, as the firm's attorneys who were involved in this litigation, and the lodestar calculation based on the firm's current billing rates. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm, which are available at the request of the Court for review *in camera*.

4. A summary of the hourly rates for the attorneys in my firm working on this case, by category of task undertaken, is included in Exhibit 1. The hourly fees noted are the same as the regular current rates for legal services charged by my firm in non-contingent matters and/or which have been used in the lodestar cross check accepted by courts in other class litigation. As discussed in more detail in the Firm Resume attached as Exhibit 3, I have 27 years of experience practicing law, with a heavy emphasis on class action litigation for nearly all of this time. Daniel

Sobelsohn has 26 years of experience handling complex business litigation, including significant class action litigation experience.

5. As of April 30, 2021 the total number of hours expended on this litigation by my firm is 2546.78 hours. The total lodestar based on the law firm's current rates is \$2,079,065.25, consisting entirely of attorneys' time and no charges for professional support staff time. This chart does not include time after May 1, 2021, despite the fact that significant work remains to be done to secure approval of the Settlement, respond to class member inquiries, and assure compliance with the Settlement, for which no compensation will be sought.

6. My firm's work on this matter touched upon all aspects of this litigation from the beginning of our work at its inception in July, 2017, until its eventual settlement. Working together with my colleagues, the work specifically undertaken by my firm included extensive pre-filing investigation to uncover and confirm the factual allegations of the case, drafting of pleadings, researching legal issues and drafting briefs for nearly all material motions on key legal issues in this case, arguing several motions including the motion for class certification, reviewing documents and taking and defending depositions – including of the class representatives and the Class's principal Expert – working extensively with the Class's principal Expert in preparing his Reports and related filings, trial-preparation including preparation of pre-trial filings, and finally negotiating the Settlement and related Settlement Documents with Defendant's counsel, as well as working with the Notice Administrator and communicating with Members of the Class. The work of my firm and my co-counsel is described in detail in the *Joint Declaration in Support of Motion for Final Approval and Award of Attorney Fees and Costs and Service Awards to Plaintiffs*, which is being filed concurrently with this Declaration.

7. This litigation represents my firm's largest single undertaking for almost the entirety of the period in which work on it began in mid-2017. Work on this case consumed substantial resources and resulted in declining some engagements for work on other legal matters due to insufficient resources. The delay in payment for this work, as well as the significant risks of non-payment if this case were not successful, were considerable.

8. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

9. I have general familiarity with the range of hourly rates typically charged by plaintiffs' class action counsel in the district where my firm is located and throughout the United States, both on a current basis and historically. From that basis I am able to conclude that the rates charged by my firm are commensurate with those prevailing in the market for such legal services furnished in complex class action litigation, such as this. The hourly rates of Lax LLP are reasonable is bolstered by the following authorities and evidence:

- (a) These rates are those normally offered and charged to clients for non-contingent work and have not been altered to account for the contingent nature of this litigation or the delay in payment.
- (b) These rates have been deemed reasonable in connection with the approval of my firm's fee applications in recent matters:
- (c) The hourly rates are commensurate with what other lawyers of similar experience charge, as acknowledged by courts in the 9th Circuit and elsewhere:

10. As detailed in Exhibit 2, my firm has incurred a total of \$11,895.23 in unreimbursed expenses in connection with the prosecution of this litigation.

11. The expenses incurred in this action are reflected on the books and records of my firm, which are available at the request of the Court. These books and records are prepared from

expense vouchers, check records and other source materials and are an accurate record of the expenses as charged by the vendors. Third-party expenses are not marked up. Upon request, we will provide the Court with copies of documentation for each of the costs itemized above.

12. My firm is not charging separately for the following costs and expenses which we do not charge to fee paying clients in non-contingent litigation: secretarial and clerical overtime, including their meals and local transportation; after-hours HVAC; word processing; subscription legal research, secretarial/clerical time for document preparation; time charges for routine copying, faxing or scanning; incoming/outgoing fax charges; office supplies (such as paper, binders, etc.); special publications; continuing legal education seminars; working meals for attorneys (with the exception of meals with clients, expert or other witnesses, or meal expenses for meetings between Plaintiffs' Counsel); and local overtime meals and transportation for attorneys.

13. With respect to the standing of counsel in this case, my firm's résumé and brief biographies for the attorneys in my firm who were involved in this litigation.

I hereby declare that the above statements are true to the best of my knowledge and belief and that I understand it is made use as evidence in court and is subject to penalty for perjury.

Executed on this 11th day of May, 2021.

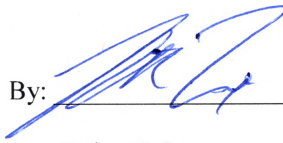
By: 
Robert I. Lax

EXHIBIT 1**MCKENZIE V. RUBY RECETIONISTS, INC****MAIDEN V. RUBY RECEPTIONISTS, INC.****Lax LLP****TIME REPORT — Inception through April 30, 2021**

Name	A	B	C	D	E	F	G	H	Total Hours	Hourly Rate	Total Lodestar
PARTNERS:											
Robert I. Lax	108.25	664.53	349.47	260.83	128.82	89.49	520.80	133.98	2,256.17	\$825	\$1,861,340.25
OF COUNSEL:											
Daniel E. Sobelsohn	0.00	104.50	0.00	120.80	0.00	0.00	59.50	5.50	290.30	\$750	\$217,725.00
TOTAL LODESTAR	108.25	769.03	349.47	381.63	128.82	89.80	580.30	139.48	2546.78		\$2,079,065.25

CATEGORIES

- a. Case Assessment, Pre-Filing Investigation, Initial Complaint
- b. Briefs, Motions, Pleadings and Research
- c. Discovery and Post-Filing Investigation
- d. Class Certification, Notice Issues, Decertification
- e. Experts & Consultants
- f. Court Appearances & Preparation
- g. Conferences, Interviews, Telephone Calls, Meetings & Correspondence
- h. Mediation & Settlement

Exhibit 1

Exhibit 4

Joint Declaration in Support of Motion for Final Approval and Award of Attorney Fees and Costs and Service Awards to Plaintiffs

EXHIBIT 2***MCKENZIE V. RUBY RECETIONISTS, INC******MAIDEN V. RUBY RECEPTIONISTS, INC.*****LAX LLP****EXPENSE REPORT — Inception through April 30, 2021**

<u>Categories:</u>	<u>Amount</u>
Filing/Witness Fees/Pro-Hac Vice Fees	\$1,300.00
Court Reporters/Transcript/Video	\$448.19
Out-of-Town Meals/Hotel/Transportation	\$10,147.04
TOTAL EXPENSES:	\$ 11,895.23

Exhibit 2

Exhibit 4

EXHIBIT 3



380 LEXINGTON AVENUE, 31ST FLOOR
NEW YORK, NEW YORK 10168
TELEPHONE (212) 818-9150
FACSIMILE (212) 208-4309

Firm Resume

Lax LLP practices primarily in the area of complex commercial litigation, placing particular emphasis on representing plaintiffs in class action and derivative suits in the federal and state courts. Over more than two decades, the firm has become well known for its academic approach to the practice of law, as well as its dedicated sense of client advocacy.

Lax LLP has been actively involved in cases representing clients in actions involving issues of securities fraud and corporate governance, consumer fraud, consumer finance, antitrust, as well as royalty and intellectual property disputes. The firm's ability and expertise in handling these matters has been recognized by both the judiciary as well as members of the Bar, with the result that the firm has been frequently appointed class counsel by Federal and State courts, and designated to serve in leadership positions on the litigation committees of several of the nation's most prominent Multidistrict class action litigations.

Robert I. Lax, Esq. received a B.A. in economics from Brandeis University in 1991 and graduated in 1994 from the Benjamin N. Cardozo School of Law of Yeshiva University, where he was Managing Editor of the Cardozo Law Review and recipient of a Ford Foundation Fellowship in Public International Law. Mr. Lax practices primarily in the area of complex class action and derivative litigation, with a strong emphasis on matters involving consumer fraud, consumer finance, securities and corporate governance, antitrust and royalty disputes, and has been repeatedly selected by peers to be included in the Super Lawyers Magazine list of the top 5% of practitioners in the area of class action litigation in the New York Metropolitan area each year since 2013. Mr. Lax has well over two decades of experience litigating class action lawsuits and has taken leading roles in some of the most significant successful cases in these areas, having been appointed Co-Chair of the Plaintiffs' Executive Committee in *Shop-Vac Marketing and Sales Practices Litig.*, by the Middle District of Pennsylvania, sole Chair of the Plaintiffs' Counsel Executive Committee in *In Re: Sony SXR D R.P.T.V. Class Action Litigation*, by the Southern District of New York, sole Chair of the Plaintiffs' Counsel Executive Committee in the *LG/Zenith Rear Projection Television Class Action Litig.* and *In Re: Samsung DLP Television*

Exhibit 3
Page 1 of 9

Exhibit 4

Class Action Litig., by the District of New Jersey, and Mr. Lax has also served as lead or co-lead counsel in numerous other notable class action cases across the United States. In addition, Mr. Lax sat on the Partners' Council of the National Consumer Law Center for two decades and has been a recurrent lecturer on consumer fraud and consumer finance litigation.

Daniel E. Sobelsohn, Esq., of counsel, received a B.A. in History from Columbia College in 1992, and graduated in 1995 from Columbia Law School, where he was a member of the Business Law Review and Moot Court Board. Mr. Sobelsohn was formerly associated with Sullivan & Cromwell LLP and Skadden, Arps, Slate, Meagher & Flom LLP. Mr. Sobelsohn's practice focuses on representing plaintiffs and defendants in complex commercial litigation, including class action matters. Mr. Sobelsohn has been involved in several of Lax LLP's consumer class actions, including *In Re: Sony SXR D R.P.T.V. Class Action Litigation* and *In Re: Samsung DLP Television Class Action Litig.*

Some examples of Lax LLP's accomplishments in the class action and derivative arena include:

In Re: Shop-Vac Wet-Dry Vacuum Marketing Litigation, a consolidated class action referred by the Judicial Panel on Multidistrict Litigation to the Middle District of Pennsylvania. Lax LLP was appointed by the District Court as Co-Chair of the Plaintiffs' Executive Litigation Committee, which lead the litigation and coordinated prosecution of the consolidated actions as well as related actions pending in state court. The action sought redress for misrepresentations in connection with the marketing of the leading manufacturer of wet-dry vacuums to consumers in the United States, and alleged violations of the Federal Magnuson-Moss Warranty Act as well as state consumer fraud and warranty claims. After extended litigation involving complex scientific expert evidence and certification of a class, a global settlement of all of the pending actions providing redress for consumers nationwide was approved by the District Court in 2016.

Novak v. Pacific Bioscience Laboratories, Inc. et al., Superior Court of the State of California, Los Angeles County. A class action brought on behalf of consumer purchasers of defendant's "Clarisonic" Skin-Brushes, alleging warranty and consumer protection statute violations as a result of concealed defects in those devices. The firm retained a forensic

electrical engineer which uncovered the defect in the battery charging system, as part of its pre-filing investigation which uncovered the defect. A settlement which provided replacement brushes and extended warranties to class members nationwide was approved by the court in 2019.

Verdie v. Mitsubishi Electric Visual Solutions America, Inc., Superior Court of the State of California, Stanislaus County. A class action brought on behalf of consumer purchasers of Mitsubishi LaserVue DLP projection televisions, alleging violations of the consumer protection statutes of California in that those devices contained characteristic defects in their design which caused video anomalies which rendered them unusable, and that the manufacturer failed to maintain sufficient spare parts to repair them. In 2015, the Superior Court approved a favorable resolution of these claims for a nationwide class of consumers, which provided for the defendant to repurchase or repair the televisions. Lax LLP served as co-counsel for the Class.

Summers et al. v. Toshiba America Consumer Electronics, Friedman et al. v. Samsung Electronics America, Messick et al. v. Pioneer Electronics USA, Inc., Superior Court of the State of New Jersey and Superior Court of California. Three separate nationwide consumer class action lawsuits brought on behalf of purchasers of both Toshiba, Samsung, and Pioneer DVD players, alleging that those machines contained inherent defects rendering them incompatible with the standards set for such devices, and therefore unable to properly play all compatible DVD Video discs, and asserting causes of action alleging breach of warranty and violation of consumer fraud statutes. In connection with these litigations, the firm successfully sought certification of plaintiff classes, undertook extensive forensic data and other discovery in the United States and in Asia, all leading to the successful negotiation of significant settlements providing extensive relief to the Class which were approved by the courts in March 2004,

Exhibit 3
Page 3 of 9

Exhibit 4

January 2005, and January 2007. The firm served as co-lead counsel for the plaintiff classes in all three cases.

In Re: Samsung DLP Television Litig., United States District Court, District of New Jersey. Consolidated class action lawsuit involving allegations of breach of warranty and consumer fraud brought on behalf of over one million consumer purchasers of Televisions utilizing Digital Light Processing technology, alleging that the TVs suffered from the “Shadow Effect” which caused darkened lines to appear on the screens. In August 2010, the Court approved what it termed “a strong, favorable, positive result for all class members” which included full cash refunds of repair expenses, and free repairs, and noting that “Class Counsel were highly skilled, vigorous advocates every step of the way.” The firm served as sole Chair of the Plaintiffs’ Counsel Executive Committee.

In Re: Sony SXRD Rear Projection Television Litig., United States District Court for the Southern District of New York. A consolidated consumer class action filed on behalf of owners of Sony rear projection televisions which alleged that the televisions were sold with an undisclosed latent defect which caused “green blobs” and “yellow stains” to obscure the viewing screen, and asserting causes of action under the Magnusson-Moss Warranty Act, as well as breach of warranty and violation of the consumer fraud statutes of several states. A nationwide settlement was approved by the Court in May 2008 providing extensive relief to the Class, including cash refunds and free repairs. The firm served as lead counsel in the consolidated action.

Rinaldi et al. v. Iomega Corp., Superior Court of the State of Delaware, New Castle County. A nationwide consumer class action filed on behalf of more than 24 million consumer purchasers of defendant’s computer peripheral storage device, alleging that these products

possessed latent defects which constituted a breach of warranty and a violation of relevant consumer protection statutes. The firm successfully negotiated a settlement valued in the tens of millions of dollars which was approved by the Court in June 2002. The firm was co-lead counsel for the Class.

In Re: LG/Zenith LCD Rear Projection Television Class Action Litigation, United States District Court, District of New Jersey. Consolidated class action lawsuit brought on behalf of consumer purchasers of rear projection televisions, asserting causes of actions arising under various consumer protection and warranty statutes relating to latent design defects in those products. The firm was appointed Chair of the Plaintiffs Litigation Committee, and successfully negotiated a settlement providing product refunds and free repairs valued in the tens of millions of dollars, which was approved by the Court in 2009.

Albert et al. v. Fletcher (In Re: ASD Shareholders Litig.), Superior Court for the State of California, Los Angeles County. A multi-defendant shareholder suit involving both class action and derivative claims alleging self-dealing and breach of fiduciary duty against corporate officers, directors, investment bankers and attorneys, which led to a class settlement of \$17.9 million, approved in March, 2001. In approving the settlement, the Honorable Marvin Lager noted the “top notch” work and “superior” level of advocacy by Class Counsel. The firm was co-lead counsel for the Class and served on the Executive Counsel Committee.

Bornstein v. Whirlpool Corporation, Circuit Court for Miami-Dade County, State of Florida. Class action lawsuit brought on behalf of purchasers of certain Kitchen-Aid brand stand mixers marketed with allegedly inflated horsepower ratings, and asserting causes of action arising under consumer protection statutes, breach of warranty, and the Magnusson-Moss Warranty Act. After extensive expert analysis involving the proper measurement of horsepower

in electric motors, a negotiated settlement was reached and certification of a nationwide class was approved by the Court in November, 2014, providing warranty relief to the class, and corrective marketing measures in which the defendant agreed to refrain from improper horsepower marketing practices.

In Re: Pioneer X30 Rear Projection Television Litigation, Superior Court of the State of California. Consolidated consumer class action lawsuits brought on behalf of purchasers of Pioneer rear projection televisions, alleging that the televisions were sold with an undisclosed characteristic defect which rendered them incapable of properly rendering video, and asserting causes of action arising under the Magnusson-Moss Warranty Act, as well as breach of warranty and violation of the consumer fraud statutes of several states. After litigation in multiple jurisdictions, including the successful defense of pre-trial rulings on interlocutory appeal, and extensive discovery involving complex technical issues, a nationwide settlement was approved by the Court in 2006 providing extensive relief to the Class, including cash reimbursements, free repairs, and product rebates. The firm served as co-lead counsel in the consolidated action.

Tulley v. AT&T Communications of California, Superior Court of California, Los Angeles County. Class action brought against telecommunications provider asserting systematic misbilling of telephone service charges to low income consumers, in which the firm served as co-counsel to the Class. A settlement was approved in 2007, resulting in the disgorgement and distribution of \$4.3 million to consumers.

Vega et al. v. Credit Bureau Enterprises, Inc., United States District Court, Eastern District of New York. Class action brought on behalf of over 1,000,000 consumers nationwide seeking redress for violations of the Federal Fair Debt Collection Practices Act. After the contested certification of the class, and an award of summary judgment in the Class' favor, in

2006, the Court approved what is believed to be the largest civil recovery within the Second Circuit in litigation under the Federal debt collection practices statute. The firm served as Lead Counsel for the Class.

In Re Risk Management Alternatives FDCPA Class Action Litig., United States District Court, Southern District of New York. Consolidated class actions brought on behalf of approximately 800,000 consumers nationwide seeking redress for violations of the Federal Fair Debt Collection Practices Act. After the contested certification of the class, the firm negotiated – and the Court approved -- what is believed to be the second largest civil recovery within the Second Circuit in litigation under the Federal debt collection practices statute. The firm served as Chair of the Plaintiffs’ Lead Counsel Committee in the consolidated actions.

Englade v. HarperCollins, Inc., Supreme Court of New York, County of New York. A class action brought against a publishing company on behalf of its published authors, alleging breach of contract and breach of the implied duty of good faith and fair dealing in selling books to related entities at below market prices. In an Order later affirmed by the Appellate Division, the Honorable Paula Omansky certified a nationwide class, and, noting the firm’s standing at the Bar, appointed the firm as co-lead counsel to the Class. A settlement providing for the recalculation and disgorgement of several million dollars of royalties to authors was approved by the court in early 2003.

Milex Electronics Corp. et al. v. Pitney Bowes Credit Corp., New York State Supreme Court, County of Suffolk. A class action suit alleging illegal practices in the lease financing of office equipment products. A class was certified by the Court and The firm appointed co-lead counsel to the Class. A class settlement was approved in April, 2001, in which defendant paid each class member a full refund plus interest of all allegedly improper lease payments.

Duronslet et al. v. TransWorld Systems, Inc., United States District Court, Central District of California. A suit brought on behalf of a class of 1.5 million consumers against a debt collection firm alleging violations of the Federal Fair Debt Collection Practices Act. The firm successfully negotiated and obtained final approval of a class settlement which was amongst the largest in the history of the Ninth Circuit in litigation under the Act. The firm acted as co-lead counsel to the Class.

McCarthy et al. v. ExTerra Credit Recovery, Inc., United States District Court, Southern District of New York. A suit brought on behalf of a class of over 55,000 consumers against a debt collection firm alleging violations of the Federal Fair Debt Collection Practices Act. The firm successfully negotiated and obtained final approval of a class settlement including a monetary payment to a common fund benefiting the Class, as well as the entry of an injunction prohibiting further violations of the Act. The firm was appointed lead counsel to the Class and co-lead counsel of the plaintiffs' Liaison Committee for the consolidated litigation.

Hatcher et al. v. Dorchester Publishing Co., New York State Supreme Court, County of New York. A suit brought on behalf of a class of authors against their publisher alleging commission of various tortious acts including fraud, breach of contract and breach of fiduciary duty. The litigation resulted in a class settlement worth over \$1 million, approved in March 1998. The firm acted as liaison and co-lead counsel to the Class.

Schwab et al. v. America Online, Inc., Circuit Court of Cook County, Illinois, Chancery Division. A nationwide consumer class action alleging misrepresentations that defendant could or would provide unlimited online access in which The firm served on the Class Counsel Committee. A nationwide class was certified and a class settlement approved in February, 1998.

Additional information regarding Lax LLP will be provided upon request.

January 1, 2021

Exhibit 3
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Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

McKENZIE LAW FIRM, P.A., and OLIVER
LAW OFFICES, INC. on Behalf of
Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Case No. 3:18-cv-01921-SI

**DECLARATION OF JON M. HERSKOWITZ IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF
OF BARON AND HERSKOWITZ**

I, Jon M. Herskowitz, declare as follows:

1. I am a member of the law firm of Baron and Herskowitz. I submit this declaration in support of Class Counsel's application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by my firm in connection with this consumer class action litigation, including both this Federal Action and a parallel action in the Circuit Court of the State of Oregon, for the County of Multnomah, Case No. 17CV48545. I have personal knowledge of the matters set forth herein based upon my active supervision and participation in all material aspects of the litigation.

2. My firm acted as Plaintiffs' class co-counsel and as Class Counsel in this matter. My firm has extensive class action experience. The firm represents individuals, small businesses, and employees in class action cases litigated in the United States. My firm has served as sole

lead-counsel, as co-lead counsel, or on an executive committee in numerous class actions, including cases brought on behalf of consumers.

3. The work done in this case by Class Counsel is described in detail in the Joint Declaration in Support of Motion for Final Approval and Award of Attorney Fees and Costs and Service Awards to Plaintiffs, which is being filed concurrently with this declaration.

4. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time, by category, spent by the partners, other attorneys, and professional support staff of my firm who were involved in this litigation, and the lodestar calculation based on my firm's current billing rates.¹ The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm, which are available at the request of the Court for review *in camera*.² Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

5. The hourly rates for the partners, other attorneys, and professional support staff in my firm included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been used in the lodestar cross check accepted by courts in other class litigation.

6. As of May 1, 2021, the total number of hours expended on this litigation by my firm is 431.50 hours. The total lodestar based on the law firm's current rates is \$345,200, consisting of \$800.00 per hour for attorneys' time. For this matter, Baron and Herskowitz did not use paralegals or other support staff, only secretarial, and therefore is not billing for staff time.

¹ This application does not include time for anyone who spent fewer than 5 hours on this litigation.

² These records may include information concerning privileged and/or confidential attorney-client communications or work product.

7. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in my firm's billing rates.

8. I have general familiarity with the range of hourly rates typically charged by plaintiffs' class action counsel in the district where my firm is located and throughout the United States, both on a current basis and historically.

9. In addition to my general familiarity with market rates and my review of the hourly rates claimed by other class action counsel, my conclusion that the hourly rates of Baron and Herskowitz are reasonable is bolstered by the following authorities and evidence:

- (a) These rates are those normally offered and charged to clients for non-contingent work and have not been altered to account for the contingent nature of this litigation or the delay in payment.
- (b) These rates have been deemed reasonable in connection with the approval of my firm's fee applications in recent matters:
- (c) The hourly rates are commensurate with what other lawyers of similar experience charge, as acknowledged by courts in the Eleventh Circuit, as well other federal and state circuits:

10. As detailed in Exhibit 2, my firm has incurred a total of \$10,524.14 in unreimbursed expenses in connection with the prosecution of this litigation.

11. The expenses incurred in this action are reflected on the books and records of my firm, which are available at the request of the Court. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses as charged by the vendors. Third-party expenses are not marked up. Upon request, we will provide the Court with copies of documentation for each of the costs itemized above.

12. By agreement between Plaintiffs' Counsel, my firm is not charging separately for the following costs and expenses: secretarial and clerical overtime, including their meals and

local transportation; after-hours HVAC; word processing; subscription legal research, secretarial/clerical time for document preparation; time charges for routine copying, faxing or scanning; incoming/outgoing fax charges; office supplies (such as paper, binders, etc.); special publications; continuing legal education seminars; working meals for attorneys (with the exception of meals with clients, expert or other witnesses, or meal expenses for meetings between Plaintiffs' Counsel); and local overtime meals and transportation for attorneys.

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

Executed on this TR day of May



JON M. HERSKOWITZ, ESQ.

EXHIBIT 1***McKenzie Law Firm, P.A. and Oliver Law Offices, Inc. v. Ruby Receptionists, Inc.*****Baron and Herskowitz****TIME REPORT — Inception through May 1, 2021**

Name	A	B	C	D	E	F	G	H	Total Hours	Hourly Rate	Total Lodestar
PARTNERS:											
Jon M. Herskowitz	52	75.25	88	30.75	24	17.75	105.50	38.25	431.50	\$800.00	\$345,200.00
									0.00		\$0.00
									0.00		\$0.00
ATTORNEYS:											
									0.00		\$0.00
									0.00		\$0.00
									0.00		\$0.00
PROFESSIONAL SUPPORT STAFF:											
									0.00		\$0.00
									0.00		\$0.00
									0.00		\$0.00
TOTAL LODESTAR	52	75.25	88	30.75	24	17.75	105.50	38.25	431.50	\$800.00	\$345,200.00

CATEGORIES

- a. Case Assessment, Pre-Filing Investigation, Initial Complaint
- b. Briefs, Motions, Pleadings and Research
- c. Discovery and Post-Filing Investigation
- d. Class Certification
- e. Experts & Consultants
- f. Court Appearances & Preparation
- g. Conferences, Interviews, Telephone Calls, Meetings & Correspondence
- h. Settlement

Exhibit 1

Exhibit 5

Joint Declaration in Support of Motion for Final Approval and Award of Attorney Fees and Costs and Service Awards to Plaintiffs

EXHIBIT 2***McKenzie Law Firm, P.A. and Oliver Law Offices, Inc. v. Ruby Receptionists, Inc.*****Baron and Herskowitz****EXPENSE REPORT — Inception through May 1, 2021**

<u>Categories:</u>	<u>Amount</u>
Photocopies/Reproduction	\$475.20
Postage/Notice Costs	
Telephone	
Messengers/Express Services	\$100.14
Filing/Witness Fees	\$1,000.00
Court Reporters/Transcript/Video	\$547.98
Computer Research (Lexis, Pacer, etc.)	\$1,328.39
Experts/Consultants/Professional Services	
Document and Data Management Expenses	\$2,095.67
Mediation	
Out-of-Town Meals/Hotel/Transportation	\$4,976.76
Facsimile Charges	
TOTAL EXPENSES:	\$10,524.14

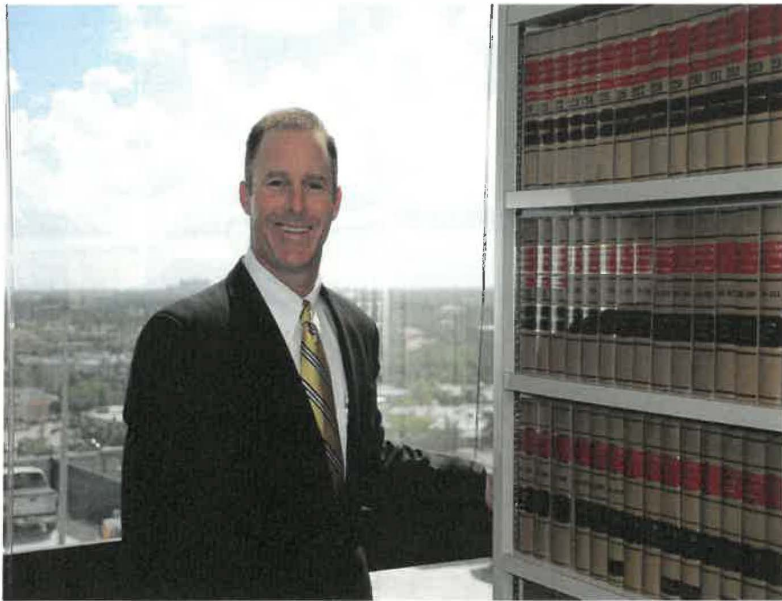
Exhibit 2

Exhibit 5

EXHIBIT 3

BARON & HERSKOWITZ TRIAL LAWYERS represent clients in tort litigation, medical malpractice, employment discrimination, nursing home neglect, and consumer class action litigation. The firm has extensive experience in both jury and non-jury trials, substantive hearings and depositions. The practice predominately is in all Florida State and Appellate Courts, Florida Federal Districts. Counsel has participated in cases in numerous states nationwide in a variety of matters.

JON M. HERSKOWITZ



Partner at Baron & Herskowitz (2008 – present)

PRIOR EXPERIENCE

The Herskowitz Law Firm (1994-2008)

Partner representing the injured in claims of negligence, medical malpractice, employment discrimination, civil rights, and consumer class actions.

Office of the State Attorney, Miami, Florida-Assistant State Attorney
1989 to 1994

Investigated and prosecuted over a hundred (100) jury trials involving first degree murder, sexual battery, armed kidnaping and armed trafficking of cocaine. Primarily assigned to the narcotics unit where duties entail the prosecution of all cases involving

Exhibit 3
Page 1 of 5

major quantities or shipments of illegal narcotics, as well the responsibility for investigations of corporations, establishments, and law enforcement.

ACADEMIC

Emory University School of Law, Atlanta, Georgia
Juris Doctor Degree - 1989

University of Georgia, Athens, Georgia
Bachelor of Arts-Psychology - 1986

SPECIAL SKILLS

National Institute of Trial Advocacy - 1993 to the Present
Master Professor

Lecture, critic and demonstrate all steps of the trial process from pre-trial motions voir dire to the cross examination of experts and closing argument. Have lectured, instructed, and demonstrated at various universities and seminars across the country, including, Atlanta, Georgia, Fort Lauderdale, Florida, and Boston, Massachusetts.

Harvard Law School (1994)
Teaching Diploma – Advanced Advocacy Skills Program

Trial Notebook
1991, 1992, 1993

Compiled, wrote, and published a thirty-two (32) page manual for use at trial for the Florida Prosecuting Attorneys Association. Contained over 250 cases for every stage of the litigation process. Used by trial attorneys and for training at offices of the State Attorney throughout the State of Florida.

ASSOCIATIONS AND MEMBERSHIPS

Memberships

Florida Bar, 1989
Colorado Bar, 1990
District of Columbia Bar, 1990
Southern and Middle District of Florida, 1990
U.S. Court of Appeals for the Eleventh Circuit, 1990

Organizations

American Trial Lawyers Association
American Bar Association
National Institute of Trial Advocacy

American Inns of Court
National Employment Lawyers Association
Academy of Florida Trial Lawyers
Make A Wish Foundation
Ronald McDonald House

FIRM HISTORY
(CLASS ACTIONS)

The firm, which is AV-Rated specializes in the trial of civil litigation matters in Federal and State Courts emphasizing consumer class actions, professional negligence, civil rights, and personal injury matters. The firm has served as lead counsel and co-counsel representing Plaintiffs in recent class actions, as follows:

Michael Cook v. Sony Electronics et al. - Southern District of New York. A consumer defect class action filed brought on behalf of over 75,000 consumers alleged an inherent defect in widely advertised televisions and the failure to provide an appropriate remedy. A monetary settlement was negotiated and approved by the Court.

Mark Risi and Terry Hollis v. Pioneer Electronics (USA) Inc., a consumer defect class action filed in Los Angeles, California; West Palm Beach, Florida brought on behalf of over 15,000 consumers alleged an inherent defect and the failure to provide an appropriate remedy. A monetary settlement was negotiated and approved by the Court.

Dishkin v. Tire Kingdom Retail Corp. - Eleventh Judicial Circuit - Florida. A class action filed against Tire Kingdom for violating several false advertising statutes in charging a shop fee. A monetary settlement was negotiated and approved by the Court.

Toister v. Alegis Corp., Southern District of Florida. FDCPA class action in which there were thousands of customers significantly affected by a computer error. A monetary settlement was negotiated and approved by the Court.

James Soper et al. v. Wyndham Hotels, A multi-jurisdictional nationwide class action. Filed in Madison County, Illinois, Miami, Florida, and San Diego, California. Brought on behalf of thousands of consumers alleging that Wyndham misrepresented an “energy crisis” and fraudulently charged consumers an “energy surcharge.” A monetary settlement was negotiated and approved by the Court.

Kenneth Fischer, M.D. et al. v. Foundation Health - Eleventh Judicial Circuit - Florida. A statewide class action brought on behalf of thousands of Florida physicians alleging that Foundation Health failed to promptly and appropriately pay physicians’ bills for services rendered to patients. A monetary settlement was negotiated and approved by the Court.

Exhibit 3
Page 3 of 5

LaPlanche et al. v. Foot Locker, Eleventh Judicial Circuit - Florida. A nationwide class action brought on behalf of African American Managerial employees alleging discrimination based on Race. A monetary settlement was negotiated and approved by the Court.

Friedman v. Samsung Electronics America and Summer v. Toshiba American Consumer Products Inc. - Superior Court of New Jersey. A nationwide class action on behalf of millions of consumers alleging that Samsung and Toshiba DVD players contained inherent defects rendering them incompatible with the DVD video specification and unable to properly play DVD video discs. The settlements approved by the Court were valued at over \$100 Million Dollars.

James Hutton, et al. v. Miami-Dade County - Eleventh Judicial Circuit - Florida. A county-wide class action for retaliation against employees for exercising their Worker's Compensation rights under Florida law. The case was settled after the Court granted Plaintiffs' Motions for Class Certification and Summary Judgment. All class members were provided 100% of all lost wages.

J.S. v. American Traffic Solutions/Dougherty et al. v. Hertz Corp. Seventeenth Judicial Circuit - Florida and United States District Court - New Jersey - related class actions filed in Florida State Court seeking a statewide class and federal court in New Jersey seeking a nationwide class for consumers who were improperly charged an administrative fee. The settlements approved by the Court exceeded \$12,000,000.

Gjolaj v. Riddex Corp., Southern District of Florida. A nationwide class in which it was alleged that Riddex devices sold using a patented technology for pests did not meet perform as represented. A monetary settlement was negotiated and approved by the Court

Bornstein v. Whirlpool Corp. - Eleventh Judicial Circuit - Florida. A nationwide class action brought by purchasers of Whirlpool's Kitchen Aid 7-Qt./1.3 HP Standing Mixers. The case was brought under deceptive practices and breach of warranty for representations concerning the horsepower of the mixers. A settlement was negotiated and approved by the Court.

Perez v. Golden Heritage Foods - Eleventh Judicial Circuit - Florida. A nationwide class action brought on behalf of purchasers of Busy Bee Honey alleging deceptive practices for violating state regulations and breach of warranty. A settlement was negotiated and approved by the Court.

McMichael v. Shop-Vac Corp. - USDC New Jersey - A nationwide class action brought on behalf of purchasers of the Shop-Vac brand Wet/Dry Vacuum alleging deceptive practices for violating regulations concerning the horsepower of the Wet/Dry Vacuums. A settlement was negotiated and approved by the Court.

Alea/Hamburg v. Wilson Corp. - USDC Northern District of Illinois - A nationwide class action brought on behalf of purchasers of alloy baseball 3-piece designed baseball bats alleging a defective design and failing to honor warranty claims. A settlement was negotiated after extensive litigation and approved by the Court.

Haney et al. v. Plucienkowski et al. - 11th Judicial Circuit, Miami-Dade County, Florida - A class action was brought on behalf of 240 homeowners that suffered economic loss as a result of

a breach of a fiduciary duty by the Homeowners Association. The class was certified, and Defendants' dispositive motions were denied. A settlement was reached prior to trial and approved by the court.

Baron and Herskowitz consists of two main partners, 1 associate, three of-counsel attorneys, and an experienced and thoroughly professional support staff. The partners have been in practice over 65 years combined and have tried over 185 jury trials.

Exhibit 3
Page 5 of 5

1 GREGORY J. BROD, CSB 184456
2 BROD LAW FIRM, P.C.
3 100 Pine Street, Suite 1250
4 San Francisco, California 94111
5 Telephone (415) 397-1130
6 Facsimile (415) 397-2121

7 Attorneys for Plaintiffs

8 [Additional Counsel on Signature Page.]

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF OREGON

11 McKENZIE LAW FIRM, P.A., and OLIVER)
12 LAW OFFICES, INC. on Behalf of)
13 Themselves and All Others Similarly Situated,)

Case No. 3:18-cv-01921-SI

14 Plaintiffs,

15 vs.

16 RUBY RECEPTIONISTS, INC,

17 Defendants.

18 **DECLARATION OF GREGORY J. BROD**
19 **IN SUPPORT OF MOTION FOR**
20 **ATTORNEYS' FEES AND**
21 **REIMBURSEMENT OF EXPENSES**
22 **FILED ON BEHALF OF BROD LAW**
23 **FIRM, P.C.**

24 **DECLARATION OF GREGORY J. BROD IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND**
25 **REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF BROD LAW FIRM, P.C.: Case No. 3:18-cv-01921-SI**

I, Gregory J. Brod declare as follows:

1. I am the President of Brod Law Firm, P.C. I submit this declaration in support of Class Counsel's application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by my firm in connection with this consumer class action litigation. I have personal knowledge of the matters set forth herein based upon my active participation in all material aspects of the litigation.
2. I acted as Plaintiffs' and Class Counsel along with co-counsel in this national class action, involving both the instant federal action, as well as a related state action.
3. The work done in this case by Class Counsel is described in detail in the Motion for Final Approval and Award of Attorneys' Fees and Costs and Service Awards to Plaintiffs, which is being filed concurrently with this declaration.
4. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.
5. As of May 1, 2021, the total number of hours I have expended on this litigation is 392 hours. The total lodestar, based on my current hourly rate of \$650.00, which has been deemed reasonable by the Superior Court of California for the County of San Francisco in June of 2020, is \$254,800.00.¹

¹ Case of *Vasquez, et al. v. Tonna, et al.*, San Francisco Superior Court Case No. CGC18567518, approving attorney's fees which application included Gregory Brod's hourly rate of \$650.00 per hour

DECLARATION OF GREGORY J. BROD IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF BROD LAW FIRM, P.C.: Case No. 3:18-cv-01921-SI

1 6. My lodestar figure is based upon my billing rates, which rates do not include charges
2 for expense items. Expense items are billed separately and such charges are not
3 duplicated in my billing rates.

4 7. I have general familiarity with the range of hourly rates typically charged by
5 plaintiffs' class action counsel in the district where my firm is located and throughout
6 the United States, both on a current basis and historically.

7 8. In addition to my general familiarity with market rates and my review of the hourly
8 rates claimed by other class action counsel, my conclusion that my hourly rate is
9 reasonable is bolstered by the following authorities and evidence:
10

11 (a) This rate is normally offered and charged to clients for non-contingent
12 work and has not been altered to account for the contingent nature of
13 this litigation or the delay in payment;

14 (b) This rate has been deemed reasonable in connection with the approval
15 of my fee application in recent matters, including before the Superior
16 Court of California for the County of San Francisco in June of 2020;

17 (c) The hourly rates are commensurate with what other lawyers of similar
18 experience charge, as acknowledged by courts in the Ninth Circuit.
19

20 9. My firm has incurred a total of \$3,069.13 in un-reimbursed expenses in connection
21 with the prosecution of this litigation.
22

23
24
25
26 **DECLARATION OF GREGORY J. BROD IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND**
27 **REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF BROD LAW FIRM, P.C.: Case No. 3:18-cv-01921-SI**
28

10. The expenses incurred in this action are reflected on the books and records of my firm, which are available at the request of the Court. These books and records are prepared from expense vouchers, credit card statements, check records and other source materials and are an accurate record of the expenses as charged by the vendors. Third-party expenses are not marked up. Upon request, I will provide the Court with copies of documentation for each of the costs itemized above.

11. By agreement between Class Counsel, my firm is not charging separately for the following costs and expenses: secretarial and clerical overtime, including their meals and local transportation; after-hours HVAC; word processing; subscription legal research, secretarial/clerical time for document preparation; time charges for routine copying, faxing or scanning; incoming/outgoing fax charges; office supplies (such as paper, binders, etc.); special publications; continuing legal education seminars; working meals for attorneys (with the exception of meals with clients, expert or other witnesses, or meal expenses for meetings between Plaintiffs' Counsel); and local overtime meals and transportation for attorneys.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this is executed in Larkspur, California, this 6th day of May, 2021.



GREGORY J. BROD

DECLARATION OF GREGORY J. BROD IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF BROD LAW FIRM, P.C.: Case No. 3:18-cv-01921-SI

- 4

EXHIBIT 1**BROD LAW FIRM, P.C.****TIME REPORT — Inception through May 1, 2021**

Name	A	B	C	D	E	F	G	H	Total Hours	Hourly Rate	Total Lodestar
PARTNERS:											
									0.00		\$0.00
									0.00		\$0.00
									0.00		\$0.00
ATTORNEYS:											
Gregory J. Brod	32	56	158	4	5	0	134	3	392	\$650	\$254,800.00
									0.00		\$0.00
									0.00		\$0.00
PROFESSIONAL SUPPORT STAFF:											
									0.00		\$0.00
									0.00		\$0.00
									0.00		\$0.00
TOTAL LODESTAR	32	56	158	4	5	0	134	3	392		\$254,800.00

CATEGORIES

- a. Case Assessment, Pre-Filing Investigation, Initial Complaint
- b. Briefs, Motions, Pleadings and Research
- c. Discovery and Post-Filing Investigation
- d. Class Certification
- e. Experts & Consultants
- f. Court Appearances & Preparation
- g. Conferences, Interviews, Telephone Calls, Meetings & Correspondence
- h. Settlement

Exhibit 1

Exhibit 6

Joint Declaration in Support of Motion for Final Approval and Award of Attorney Fees and Costs and Service Awards to Plaintiffs

Page 5 of 7

EXHIBIT 2
BROD LAW FIRM, P.C.

EXPENSE REPORT — Inception through May 1, 2021

<u>Categories:</u>	<u>Amount</u>
Photocopies/Reproduction	\$0.00
Postage/Notice Costs	\$0.00
Telephone	\$0.00
Messengers/Express Services	\$0.00
Filing/Witness Fees	\$0.00
Court Reporters/Transcript/Video	\$0.00
Pro Hac Vice Application Costs	\$1,000.00
Computer Research (Lexis, Pacer, etc.)	\$0.00
Experts/Consultants/Professional Services	\$0.00
Document and Data Management Expenses	\$0.00
Mediation	\$0.00
Out-of-Town Meals/Hotel/Transportation	\$2,069.13
Facsimile Charges	\$0.00
TOTAL EXPENSES:	\$3,069.13

Exhibit 2

Exhibit 6



GREGORY J. BROD

**PROFESSIONAL
HISTORY:**

BROD LAW FIRM, P.C. San Francisco, California
Plaintiff's side litigation boutique focusing on all aspects of personal injury, legal malpractice, qui-tam, class actions, landlord-tenant, business disputes, and oil and gas.

TICKETMASTER (TicketWeb Division) Berkeley, California 4/2000 to 2/2001
General Counsel/Director Business Development.

Law Offices of BELLI & McLEAN San Francisco, California 1/1998 to 3/2000
Attorney in trial law firm specializing in civil litigation.

CAUDLE, WELCH, POLITEO & BOVEE Law Firm Oakland, California 4/1997-12/97
Associate attorney in law firm practicing personal lines insurance defense.

EDUCATION:

UNIVERSITY OF HOUSTON LAW CENTER Houston, Texas J.D., 1996
Activities: Hippard Mock Trial, Blakely Moot Court, Newhouse
Mediation Competition, Intellectual Property Student Organization.

LOUISIANA STATE UNIVERSITY International Law Program Summer 1994
Aix-en-Provence, France

UNIVERSITY OF MARYLAND, College Park, Maryland B.A., 1989
Major: Speech Communication/English

OTHER:

State Bar of California: Member in good standing since December 1996;
Admitted before U.S.D.C. Northern, Eastern and Central Districts of
California; Admitted to United States Court of Appeals for the Ninth Circuit;
Qualified Mediator under Texas ADR Act; San Francisco Trial Lawyers
Association ("SFTLA") Member since 2001; SFTLA Education Committee
Member; ABA Health Law Section Member; Consumer Attorneys
Association of California Member; Former NFLPA Certified Contract
Advisor; CLE lecturer on Attorney's Fees - San Francisco Trial Lawyers
Association, August, 2018; CLE lecturer on Comparative Fault - Strafford
Publications, March, 2019

Publications: Fee Agreements – *Limiting time in which Legal Malpractice
claims may be brought*; Plaintiff Magazine, April 2013; *Short-term rent websites
create unique landlord-tenant challenges*, Not Big Law Magazine, May, 2014;
*A System for Building and Maintaining Client Relationships in Contingency Fee
Cases* - Plaintiff Magazine, July, 2019

Exhibit 3

Exhibit 6