

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

STEPHEN PHILLIPS, MARY  
TOURVILLE-PHILLIPS, SANDI  
BARNETT, GREGORY BENJAMIN,  
TYRUS DAVIS, and CHRISTOPHER  
BINGHAM, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

CALIBER HOME LOANS, INC.

Defendant.

Case No.: 19-cv-02711-WMW-LIB

**DECLARATION OF JAMES L. KAUFFMAN IN SUPPORT OF PLAINTIFFS'  
FEE, EXPENSE, AND SERVICE AWARD APPLICATION**

I, James L. Kauffman, declare:

1. I am a partner at Bailey & Glasser LLP, and I am admitted to practice before this Court as counsel of record for Plaintiffs and the Settlement Class in this case. I have personal knowledge of all of the facts set forth in this Declaration unless otherwise stated, and I am competent to testify to these facts if called on to do so.

**BAILEY & GLASSER LLP**

2. Bailey & Glasser LLP was founded in 1999 and has an established reputation for successfully prosecuting and defending multimillion dollar cases,

including complex class actions. With sixteen offices across the country from Boston, MA to Oakland, CA, our lawyers routinely handle high-stake litigation and other lawyers call upon our firm routinely because of our unique blend of resources and trial experience.

3. My firm, Bailey & Glasser, has obtained millions of dollars in restitution and debt forgiveness for consumers by successfully asserting state and federal consumer credit law claims on their behalf. A partial listing of those cases includes the following:

- *Krakauer v. Dish Network, L.L.C.*, Case No. 1:14-cv-00333 (M.D. N.C.) (\$20.5 million jury verdict in a class action trial against Dish Network, alleging Dish was liable for more than 51,000 telemarketing calls placed by a defunct DISH dealer to persons whose telephone numbers were on the National Do Not Call Registry).
- *Tadepalli v. Uber Technologies, Inc.*, Case 3:15-cv-04348 (N.D. Cal.) (100% refunds made in class action settlement for California Uber riders charged approximately \$2.2 million in “airport fee tolls” which Uber did not pay to California airports).
- *Wieland v. Bring Care Home, Inc.*, C.A. No. ESCV2013-01380 (Essex County, Mass.) (class action settlement for failure to pay all hours worked).
- *Thomas v. Home Credit Corp., Inc.*, 11-CVS-1116 (Vance County, N.C.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- *Desai v. Charvat*, Civil Action No. 1:11-cv-1925 (N.D. Ill.) (\$15 million TCPA class settlement).
- *Roberts v. Walgreen Co., et al.*, Civil Action No. 12-C-337 (Circuit Court of Mercer County, West Virginia) (wage payment class settlement).

- *Glover v. Bank of America, N.A.*, C.A. No. 13-40042-TSH (D. Mass.) (class action settlement for Massachusetts borrowers regarding late fees).
- *Powers v. Santander Consumer USA, Inc.*, Civil Action No. 12-cv-11932-TSH (D. Mass.) (consumer class action resulting in the establishment of a \$750,000 settlement fund and \$20 million in debt relief).
- *Pirillo v. PNC Mortgage Corp.*, Civil Action No. 11-C-751 (Circuit Court of Monongalia County, West Virginia) (consumer class action settlement).
- *Ross v. CitiFinancial Auto Ltd.*, Case No. 12-1173-TJC (M.D. Fla.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- *Morris v. Merck Sharp & Dahme Corp.*, Civil Action No. 3:11-cv-00882 (S.D. W. Va.) (wage payment class action settlement totaling \$750,000).
- *Hall v. Capital One Auto Fin., Inc.*, Case No. 08-1181 (N.D. Ohio) (\$37 million settlement on behalf of state-wide class of car owners sent allegedly flawed repossession notices).
- *Brailsford v. Jackson Hewitt, Inc.*, Case No. 06-00700 (N.D. Cal.) (\$672,000 settlement on behalf of class of California consumers).
- *Hardwick v. Rent-A-Center, Inc.*, Civil Action No. 3:06-0901 (S.D. W. Va.) (class action settlement worth more than \$5 million, alleging violations of state Consumer Goods Rental Protection Act).
- *Triplett v. NationStar Mortgage, LLC*, Civil Action No. 3:11-cv-238 (S.D. W. Va.) (loan servicing case settled for \$1.5 million).
- *Shonk v. SG Sales Co.*, Case No. 07-C-1800 (Circuit Court of Kanawha County, West Virginia) (\$2.4 million nationwide settlement of class action brought under the Telephone Consumer Protection Act).
- *Lowe v. Ford Motor Credit*, Case No. 99 CVF 15806 (Cuyahoga County, Ohio) (\$22 million settlement on behalf of state-wide class of car owners subject to flawed repossession practices).
- *Muhammad v. National City Mortgage, Inc.*, Case No. 2:07-cv-00423 (S.D. W. Va.) (\$700,000 settlement of West Virginia loan servicing class action alleging National City Bank charged late loan-payment fees in violation

of state law).

- *Brailsford v. Jackson Hewitt*, Case No. C 06-00700 CW (N.D. Cal.) (class action against Jackson Hewitt, Inc. for class of California consumers who purchased the tax preparer's refund anticipation loan product, settled for \$672,000).
- *Dunlap v. Wells Fargo Financial West Virginia, Inc.*, Case No. 04-C-101 (Lincoln County, W. Va.) (predatory lending class action for over 100 West Virginia mortgage borrowers, settled for just over \$9 million, including more than \$4.9 million write down in mortgage balances, \$4.15 million in cash, and credit repair).
- *Cummins v. H & R Block, Inc.*, Case No. 03-C-134 (Kanawha County, W. Va.) (in a case litigated for five years in venues ranging from the West Virginia trial and appellate courts, to federal district courts in West Virginia and Illinois, to the United States Supreme Court, firm lawyers served as lead counsel in winning a \$62.5 million multistate class action settlement against H&R Block. The case involved first-impression claims relating to the application of West Virginia's credit-services organization statute to Block's refund anticipation loan product. Other firms across the country litigated cases against Block alleging similar claims, without success, for more than ten years. West Virginia's share of the settlement was \$32.5 million).
- *Malacky v. Huntington Nat'l Bank*, Case No. CV 03 491420 (Cuyahoga County, Ohio) (\$15 million settlement in favor of state-wide class of car owners sent flawed repossession notices).
- *Anderson v. Provident Bank*, Civil Action No. 04-C-199 (Circuit Court of Mercer County, West Virginia) (predatory mortgage lending class action settled for \$8.1 million on behalf of 140 class members).
- *Mey v. Herbalife Int'l, Inc.*, Civil Action No. 01-C-263 (Circuit Court of Ohio County, West Virginia) (\$7 million nationwide class action settlement alleging violations of the federal Telephone Consumer Protection Act).
- *Cooley v. F.N.B. Corp.*, Case No. 10010 of 2003, C.A. (Lawrence County, Penn.) (\$14 million settlement on behalf of state-wide class of car owners allegedly deprived of post-repossession disclosures).

- *Dillon v. Chase*, Civil Action No. 03-C-164-W (Circuit Court of Hancock County, West Virginia) (\$3.3 million consumer class action settlement).
- *In re Household Lending Litig.*, Case No. C 02-1240 CW (N.D. Cal.) (\$172 million settlement on behalf of nationwide class of home mortgage borrowers injured by predatory mortgage lending practices).
- *Curry v. Fairbanks Capital Corporation*, Case No. 03-10875-DPW (D. Mass.) (\$55 million settlement on behalf of nationwide class of borrowers subject to predatory loan servicing practices).
- *Deem v. Ames True Temper, Inc.*, Civil Action No. 6:10-cv-01339 (S.D. W. Va.) (\$405,000 class action settlement in an ERISA action).

### EXPERIENCE

4. I am licensed and in good standing to practice law in the State of Florida, State of Arkansas, and District of Columbia. I have been a member of the Arkansas Bar since 2003 after I obtained my J.D. from the University of Florida Levin College of Law in December 2002. For more than 18 years, I have served as class and appellate counsel in a wide variety of cases including deceptive trade practices, securities fraud, ERISA, and consumer protection. I am a member of Public Justice, the Florida Bar Association, the Arkansas Bar Association, and the American Association of Justice (AAJ).

5. I have been appointed as lead class counsel in other actions that challenged a loan servicer's practice of collecting Pay-to-Pay fees. These include: *Pierce v. Statebridge Company, LLC*, No. 1:20-cv-00117-WO-JLW (M.D. N.C.), where the district court granted final approval of the Settlement, which included repayment of fees and five years of injunctive relief, and *Lembeck v. Arvest Central*

*Mortgage Co.*, 3:20-cv-03277-VC (N.D. Cal.), in which the district court granted final approval of a settlement that provided a cash fund of \$1.5 million and injunctive relief.

6. I was also appointed as lead class counsel in one of the first filed class action lawsuits in the country to challenge Pay-to-Pay fees, *Montesi v. Seterus, Inc.*, Case No. 50-2015-CA-010910-XXXX-MB (Fla. Cir. Ct. Palm Beach Cty.). *Montesi* was heavily litigated and resulted in class certification over the defendant's opposition. It resulted in a \$1.75 million class settlement of Florida borrowers, which represented 35% of the amount collected by Seterus during the class period.

7. I was appointed as class counsel by the district courts in two additional Pay-to-Pay fee cases in California, *Torliatt v. Ocwen Loan Servicing, LLC et. al*, No. 3:19-cv-04303-WHO (N.D. Cal.), which is still pending, and *Silveira v. M&T Bank*, No. 2:19-cv-06958-ODW (C.D. Cal.), where the Court granted preliminary approval to a \$3.3 million settlement which represents exactly 34.7% of the total amount of Pay-to-Pay fees collected nationwide by M&T Bank during the settlement's class period.

8. I am currently representing proposed class representatives in more than fifteen other class action cases in courts across the country challenging the legality of the collection of Pay-to-Pay from residential borrowers. *See Brown v.*

*PennyMac Loan Services*, No. 5:20-cv-01052-FMO(KKx) (C.D. Cal.); *Caldwell v. Freedom Mortgage Corp.*, No. 3:19-cv-02193-N (N.D. Tex.); *Elbert v. RoundPoint Loan Servicing*, No. 3:20-cv-00250-MMC(N.D. Cal.); *Fernandez v. Rushmore Loan Servicing*, No. 30-2020-01128156-CU-AT-CXC (Cal. Sup. Ct., Orange Cty.); *Langston v. Gateway First Bank*, No. 5:20-cv-01902 (C.D. Cal.); *Mariscal v. Flagstar Bank, F.S.B.*, No. 5:19-cv-02023 (C.D. Cal.); *McFadden v. Nationstar Mortgage Co. d/b/a Mr. Cooper*, No. 1:20-cv-00166-EGS (D.D.C.); *Thomas-Lawson v. Carrington Mortgage Co.*, No. 1:19-cv-03567-CCB (D. Md.); *Urbina v. Freedom Mortgage Co.*, No. 1:19-cv-01471 (E.D. Cal.); *Williams v. PHH Mortgage Corp.*, No. 20-cv-04018 (S.D. Tex.); *Williams v. Lakeview Loan Servicing, LLC et al.*, Case No 4:20cv-01900 (S.D. Tex.); and *Wilson v. Santander Consumer USA, Inc.*, No. 4:20-cv-00152-KGB (E.D. Ark.).

#### **ATTORNEYS' FEES AND COSTS**

9. Bailey & Glasser started working on this case in 2019 when the original complaint in this matter was filed. BG investigated the facts and legal claims asserted in this matter, as well as in the two other cases filed against Caliber, in the Southern District of Texas (*Barnett*) in 2019 and the Middle District of North Carolina (*Davis*) in 2020.

10. Bailey & Glasser attorneys and paralegals spent more than 388 hours litigating these three actions to date. A summary of the hours litigated is as follows:

Name	Title	Hours	Laffey Rate	Lodestar
<b>Attorneys</b>				
Kauffman, James L.	Partner	168	\$759	\$127,512.00
Ryan, Elizabeth A.	Partner	74.5	\$914	\$68,093.00
Marshall, Jonathan R.	Partner	5.9	\$759	\$4,478.10
Kipnis, Patricia M.	Partner	5	\$759	\$3,795.00
Woods, Victor S.	Senior Associate	23	\$672	\$15,456
Lajoie, Benjamin P.	Associate	17.3	\$465	\$8,044.50
<b>Attorney Subtotal</b>				
<b>Lodestar</b>		293.7		\$227,378.60
<b>Paralegals</b>				
Pierre, Vanessa K.	Paralegal	65.9	\$206	\$13,575.40
McClay, Mary E.	Paralegal	29	\$206	\$5,974.00
<b>Paralegal Subtotal</b>				
<b>Lodestar</b>		94.9		\$19,549.40
<b>TOTAL LODESTAR</b>		388.6		<b>\$246,928.00</b>

11. Attorneys and paralegals from Bailey & Glasser ("BG") worked closely with our co-counsel Carney Bates and Pulliam (CPB) on this case and the *Barnett* case, and Tycko & Zavareei ("TZ"), in the *Bingham* case. Work was divided relatively evenly between the firms on these cases to avoid duplication of efforts. On all cases, our firms endeavored to divide work based on which firm's attorneys had the most experience in a given area. My firm investigated



the claims asserted in this case and was involved in the drafting of the original complaint.

12. Caliber filed motions to dismiss in each of the three Lawsuits. The three firms divided responsibility for drafting oppositions to the motions. Ms. Ryan from BG participated in the hearing on the motion to dismiss in *Barnett*, and I participated in the motion to dismiss hearing before this Court. My firm also took the lead on or assisted with the following: drafting oppositions to motions to stay; drafting pretrial disclosures, statements, and schedules; drafting discovery in this case and in *Barnett*, preparing for and attending the mediation; continued settlement negotiations, and drafting settlement documents.

13. Overall, the attorneys and paralegals from BG who worked on the three lawsuits that were consolidated before this Court performed tasks related to the investigation of each of the three Plaintiffs' claims and preparation of the Complaint in each case. In all three district courts, Caliber moved to dismiss, and the attorneys and paralegals worked to research and draft oppositions to the motions to dismiss. Each case involved different state-based consumer or debt collection statutory claims, and while there was some overlap in the arguments made in each case, the attorneys and paralegals had to pay special attention to any arguments that were made for that particular statutory claim. This district court ruled on the motion to dismiss in September 2020, on the motion to

dismiss, and soon thereafter, the parties served discovery in this case, and in *Barnett*. Before mediation, the Parties exchanged information critical to meaningful settlement negotiations.

14. Notably, the time summarized above does not include any additional work that will be performed responding to class member inquiries about the settlement, finalizing and filing the attorney fee petition, attending the final approval hearing, or assisting the settlement administration with issues that may arise related to the distribution of the Settlement Fund.

15. A firm resume was submitted with Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, ECF # 80.

16. Time records were kept contemporaneously. For each task performed, staff accounted for their time in 1/10th of an hour (6-minute) increments or shorter, and included a brief narrative description of the work performed. Staff did not "block bill."

17. Our time records were reviewed for duplicative or erroneous entries, and timekeepers who logged less than 5 hours were removed.

18. The hourly rates shown for the attorneys at Bailey & Glasser LLP are our 2020-2021 rates charged as delineated by the Adjusted Laffey Matrix (<http://www.laffeymatrix.com/>), which provides market rates for attorneys working in the Washington, D.C. area. *See, e.g., DL v. Dist. of Columbia*, 924 F.3d

585 (D.C. Cir. 2019) (discussing the history and basis of the Laffey matrix).

Although the Adjusted Laffey Matrix is updated annually, courts have awarded attorneys' fees consistent with the Adjusted Laffey Matrix to my firm in a number of cases. *See, e.g., Kumar v. Salov North America Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898 (N.D. Cal. July 7, 2017); *Stathakos v. Columbia Sportswear Co.*, No. 15-CV-04543-YGR, 2018 WL 1710075, at \*6 (N.D. Cal. Apr. 9, 2018); *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D. Ohio Aug. 7, 2018), Dkt. 179; *In re Think Finance, LLC, et al.*, No. 17-bk-33964 (Bankr. N.D. Tex.); *Brown v. Transurban USA, Inc.*, No. 1:15CV494 (JCC/MSN), 2016 WL 6909683 (E.D. Va. Sept. 29, 2016); *Small v. BOKF, N.A.*, No. 1:13-cv-01125-REB-MJW (D. Colo.); *Soule v. Hilton Worldwide, Inc.*, No. CV 13-00652 ACK-RLP, 2015 WL 12827769 (D. Haw. Aug. 25, 2015); *Beck v. Test Masters Educ. Servs., Inc.*, 73 F. Supp. 3d 12 (D.D.C. 2014); *see also Mancini v. Dan P. Plute, Inc.*, 358 F. App'x 886 (9th Cir. 2009); *Harris et al. v. Farmers Insurance Exchange et al.*, BC579498 (Cal. Super. Ct., L.A. Cty. Aug. 30, 2020) (accepting Adjusted Laffey Matrix as evidence of reasonable hourly rates charged by Washington, D.C. attorneys).

19. I have reviewed the *Laffey Matrix* and state that each of the attorneys who performed work on this matter has been matched to their position in the firm and years of experience at the time work was performed and the rate during the period of time work was performed in this Action, which for example,

reports an hourly rate of \$672 for attorneys with at least 8 years of experience and \$206 for paralegals. This calculation equates Class Counsel's lodestar for Bailey & Glasser LLP's attorneys and paralegals as **\$246,928.00**.

20. I personally have several hourly clients who pay me rates of \$600-850 per hour or more for attorneys and \$250 per hour for paralegals of the same experience as those who performed work in this matter.

21. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation and fair resolution of this matter. The lodestar reflected in the above extract does not include all of the time to be devoted to preparing for and appearing at the final approval hearing, or dealing with post-hearing matters.

22. I anticipate that Class Counsel will devote substantial additional time to this case after the date of this Declaration, including: (1) finalizing this application; (2) preparing for and attending the final approval hearing; (3) monitoring the claims and distribution process; corresponding with the claims administrator; (4) managing the extended payment plan; (5) ensuring compliance with the injunctive relief; and (6) responding to Class Member inquiries.

23. Bailey & Glasser also carried some of the costs in this litigation – taking on this risk for the putative class members. Specifically, Bailey & Glasser incurred \$5,887.30 in unreimbursed case-related expenses. These expenses

include mediation fees, travel, and outside delivery services. The vast majority of the expenses were incurred as \$5,050 in mediation expenses. These expenses do not include any legal research, copying or postage costs, which were expenses incurred by Class Counsel but are not sought to be reimbursed. An itemized list of Bailey & Glasser LLP's expenses is as follows:

<b>Expense</b>	<b>Amount</b>
Mediation Fees	\$5,050.00
Travel	\$728.59
Outside Delivery Services	\$108.71
<b>TOTAL</b>	<b>\$5,887.30</b>

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

Executed this 11th day of October 2021 in Washington D.C.

/s/ James L. Kauffman

James L. Kauffman