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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16
17 IN RE INTUIT DATA LITIGATION

Master Docket No.: 15-CV-1778-EJD-PSG

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19 THIS DOCUMENT RELATES TO:

20 **ALL ACTIONS**

**DECLARATION OF RICHARD MCCUNE IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, AWARD OF ATTORNEY FEES
AND COST, AND APPROVAL OF CLASS
REPRESENTATIVE SERVICE AWARD**

Judge: Hon. Edward J. Davila

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23 I, Richard McCune, declare as follows:

24 1. I am an attorney at law duly licensed to practice before all courts of the State of
25 California, and a shareholder with McCune Wright Arevalo, LLP ("McCune Wright Arevalo"). The
26 following is based on my personal knowledge, and, if called as a witness, I could and would testify
27 competently thereto.

28 2. I am a partner with McCune Wright Arevalo. My firm is a thirteen-attorney firm located

1 in Ontario, California that represents plaintiffs in consumer fraud class actions, product liability, data
2 breach and other complex class action litigations in California and across the United States. I obtained
3 my J.D. from the University of Southern California in June of 1987 and became a member of the
4 California Bar in November of 1987. I have more than thirty years of litigation and trial experience and
5 am AV rated. Over the last decade, I have focused my practice on representing consumers in class
6 action litigation. Prior to that, I represented plaintiffs in a variety of complex litigation matters, with
7 emphasis in product liability actions.

8 3. I have been appointed class counsel in numerous state and federal class actions. A
9 significant part of my practice since 2004 has been litigating consumer class action cases. In 2007, I
10 was class counsel against Bank of America in an overdraft class case that settled for \$35 million. In
11 2010, I served as co-class counsel and co-trial counsel in a consumer fraud class action against Wells
12 Fargo Bank, N.A., in a trial that resulted in a \$203 million trial verdict. From 2009 to 2012, I was
13 actively involved in litigation against over 33 banks in an overdraft MDL in the Southern District of
14 Florida (*In re: Checking Account Overdraft Litigation*, MDL No. 2036), that has generated over \$1
15 billion in settlements. I was appointed class counsel in a \$5 million settlement with Citibank, N.A.
16 relating to their overdraft practices. In 2011, I was class and trial class counsel in a consumer class
17 action trial that resulted in a plaintiffs' verdict on behalf of a class of California Correct Craft, Inc. boat
18 owners.

19 4. I have been appointed as class counsel more than 30 times including being appointed as
20 class counsel in large multi-district litigation cases. I currently am appointed co-lead counsel in one
21 MDL, serve on one MDL executive committees, and have been appointed as one of two settlement
22 class counsel in a third MDL. I am appointed by Central District of California Judge James V. Selna to
23 the Plaintiffs Personal Injury and Wrongful Death Committee *In re: Toyota Motor Corp. Unintended*
24 *Acceleration Marketing, Sales Practices, and Products Liability Litigation* (MDL #2151). Central
25 District of California Judge George H. Wu appointed me to serve as settlement class counsel in *In re:*
26 *Hyundai and Kia Fuel Economy Litigation* (MDL #2424). I am currently appointed by South Carolina
27 District Judge Bruce H. Henricks to serve as co-lead counsel *In re: TD Bank, N.A. Debit Card*
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1 *Overdraft Fee Litigation.*

2 5. Our firm's total lodestar is this matter is \$200,969.50. I have worked a total of 130.55
3 hours in the case, and my work in this case was billed at my current lodestar of \$825.00 per hour that
4 has been approved in a number of different District Courts in a number of different circuits. In addition
5 to my work, other primary attorneys from McCune Wright Arevalo, LLP also worked on this matter.
6 They are namely Michele M. Vercoski (partner). Michele M. Vercoski obtained her B.S.N. from
7 Rutgers University in 2001 before attending and graduating from Tulane Law School in 2004, where
8 she graduated in the top ten percent of her graduating class and became a member of The Order of the
9 Coif. Ms. Vercoski clerked for the Honorable Steven L. Lefelt, J.A.D., Superior Court of New Jersey,
10 Appellate Division from August 2004 to August 2005. Since 2006, Ms. Vercoski has worked at
11 McCune Wright Arevalo (or its predecessor firm of Welebir & McCune). Her practice has included
12 representing Plaintiffs in complex litigation matters, including data breach and consumer class action
13 cases, and has had extensive experience in all aspects of consumer class cases ranging from drafting
14 pleadings to trial work to appellate/U.S. Supreme Court work. Ms. Vercoski has particular experience
15 in data breach class actions, that includes her recently arguing before the U.S. Supreme Court in the
16 consumer data breach cases of *Varela v. Lamps Plus*. Michele Vercoski worked 93.19 hours on the
17 case, and her usual hourly fee for lodestar contingency class action cases is currently \$675.00 per hour
18 but is being billed at her rate of \$550 during most of the pendency of this litigation. Other attorneys
19 who worked on this case include: David Wright (partner), with over 20 years' experience, performed
20 limited work on the case (3.5 hours) with his usual hourly fee for lodestar contingency class action
21 cases of \$825.00 per hour; Jae (Eddie) Kim (partner) also performed limited work (3.75 hours), with
22 his usual hourly fee for lodestar contingency class action case of \$550.00 per hour; Kristy Arevalo
23 (partner) also performed limited supervisory work (0.6 hours) with her usual hourly fee for lodestar
24 contingency class action fee during the pendency of the case of \$650.00; attorney Jessica Amoroso
25 performed limited work (17.6 hours), billed at \$350.00 per hour, and attorney Simi Peterson worked
26 8.5 hours billed at \$350.00 per hour.

27 7. The case was staffed by Ann Smith, who is a long-term paralegal with McCune Wright
28

1 Arevalo, Vanessa Hooker, a law clerk and several legal assistants. The paralegal, law clerk and legal
2 assistants worked a total of 103.11 hours on the case. Our usual and customary paralegal hourly rate is
3 currently \$250 per hour for Ms. Smith, law clerk rate of \$300 per hour for Ms. Hooker and the range of
4 \$175 to \$250 for the legal assistants.

5 8. McCune Wright Arevalo has been active in all aspects of the case. I had been involved
6 in strategic decisions with co-counsel, attended mediations and settlement conferences, I had expert
7 witness contact, and I had reviewed pleadings, discovery and substantive motions filed in this case. Ms.
8 Vercoski had principal responsibility for client contact, investigation, legal research, discovery,
9 conference calls, and factual and legal edits to substantive motions. Due to the amount of privileged
10 information contained in the hourly billing records, those detailed records are not attached here, but can
11 be provided in camera should this Court wish to review them.

12 9. McCune Wright Arevalo also worked extensively and effectively with co-counsels
13 Lieff, Cabraser, Heimann & Bernstein, LLP, Abbot Law Group P.A., Goldman Scarlato & Penny, P.C.,
14 Milberg, LLP; Siprut, P. C. (collectively "Class Counsel"). Class Counsel made significant efforts
15 toward the efficient allocation of work between them. Partners in the firms coordinated their work
16 assignments on a regular basis to prevent unnecessary duplication of work across the firms.

17 10. The time that McCune Wright Arevalo has spent on this litigation has been completely
18 contingent on the outcome. McCune Wright Arevalo has not been paid for any of its time spent on this
19 litigation.

20 11. In connection with this litigation, the attorneys at McCune Wright Arevalo have spent
21 more than 250 hours on the case. This figure was generated after reducing hours based on reasonable
22 billing judgment. This information is derived directly from McCune Wright Arevalo's time records,
23 which are prepared contemporaneously and maintained by McCune Wright Arevalo in the ordinary
24 course of business.

25 12. McCune Wright Arevalo sets its hourly rates according to prevailing market rates and
26 has consistently been awarded fees according to those rates. McCune Wright Arevalo almost
27 exclusively represents clients on a contingent fee basis, both in class and individual cases. However,
28

1 those rates are the minimum we would charge to accept employment on an hourly basis.

2 13. The following, Table 1, is the summary listing each employee for which McCune
3 Wright Arevalo is seeking compensation for legal services in connection with this litigation, the hours
4 each individual worked on the case, and the lodestar based on the timekeepers' current hourly rate.
5 Table 2, below, includes the hours worked and associated loadstar broken down by task codes¹.

6 **Table 1**

Employee	Title	Billable Hours	Rate	Lodestar
Richard McCune	Partner	130.55	\$825.00	\$106,878.75
Michele Vercoski	Partner	93.19	\$550.00	\$51,254.50
David Wright	Partner	3.5	\$825.00	\$2,887.50
Kristy Arevalo	Partner	0.6	\$650.00	\$390.00
Jae (Eddie) Kim	Partner	3.75	\$550.00	\$2,062.50
Simi Peterson	Attorney	8.5	\$350.00	\$2,975.00
Jessica Amoroso	Attorney	17.6	\$350.00	\$6,160.00
Vanessa Hooker	Law Clerk	75	\$300.00	\$22,500.00
Ann Smith	Paralegal	4.7	\$250.00	\$1,017.50
Annette Ayala	Legal Assistant	15.87	\$200.00	\$3,174.00

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¹ These task codes are: 1. Factual Investigation; 2. Legal Research; 3. Complaints; 4. Class Certification; 5. Other Briefs and Pleadings; 6. Depositions; 7. Document Review; 8. Other Discovery; 9. Court Appearances; 10. Experts; 11. Mediation and Settlement; 12. Case Strategy; 13. Class Member Communications; 14. PEC Duties/Meetings; 15. Trial/Trial Prep; 16. Appeals.

1	Kathy Krause	Legal Assistant	.5	\$275.00	\$137.50
2	Cynthia Fitch	Legal Assistant	2.47	\$175.00	\$432.25
3	Nichole Myles	Legal Assistant	3.2	\$250.00	\$800.00
4	Jack Boren	Administrator	2.0	\$150.00	\$300.00
5	Total		360.80		\$200,969.50

Table 2

10	Task Codes	Billable Hours	Lodestar
11	1. Factual Investigation	23.5	\$12,062.50
12	2. Legal Research	58.87	\$21,336.00
13	3. Complaints	38.37	\$19,695.00
14	4. Class Certification	0.00	\$0
15	5. Other Briefs and Pleadings	15.3	\$5,390.00
16	6. Depositions	0.00	\$0
17	7. Document Review	42.03	\$27,427.75
18	8. Other Discovery	17.51	\$10,033.50
19	9. Court Appearances	0.00	\$0
20	10. Experts	0.00	\$0
21	11. Mediation and Settlement	62.3	\$49,170.00
22	12. Case Strategy	12.05	\$9,130.00
23	13. Class Member	15.9	\$9,134.00
24	Communications		

14. PEC Duties/Meetings	74.97	\$37,590.75
Total	360.80	\$200,969.50

14. Based upon my experience with other class actions and complex matters, I believe that time expended by McCune Wright Arevalo in connection with this litigation was reasonable in amount and contributed to the ultimate result achieved for the class.

15. The following is breakdown of the expenses for which McCune Wright Arevalo seeks reimbursement in this matter:

ITEM	COST
Fed-Ex/Delivery	\$122.86
Computer Research	\$181.60
Process Service Fees	\$40.00
Filing Fees	\$400.00
Telephone Conference	\$68.03
Travel	\$3,661.57
Total	\$4,474.06

16. The foregoing expenses were incurred solely in connection with this litigation and are reflected in McCune Wright Arevalo's books and records as maintained in the ordinary course of business. These books and records are prepared from invoices, receipts, expense vouchers, check records and other records, and are an accurate record of the expenses incurred in this case.

17. The above expense numbers do not include significant internal and other costs that McCune Wright Arevalo has incurred, but for which McCune Wright Arevalo does not seek reimbursement, including costs for printing, in-house copying, telephone expenses and legal research program subscription expenses.

1 18. Based on my experience and my knowledge regarding the factual and legal issues in this
2 matter, it is my opinion that the proposed settlement in this matter is fair, reasonable and adequate, and
3 is in the best interests of the class.
4

5 I declare under penalty of perjury under the laws of the United States and the State of Illinois
6 that the foregoing is true and correct. Executed this 10th day of December 2018, Irvine, California.
7

8 /s/ Richard D. McCune
9 Richard D. McCune
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