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11 **UNITED STATES DISTRICT COURT**
 12
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 SEAN HARTRANFT, on behalf of
 15 himself and all others similarly
 16 situated,

17 Plaintiff,

18 v.

19 TVI, Inc. d/b/a SAVERS, INC.,
 20 APOGEE RETAIL, LLC,

21 Defendants.

Case No. 8:15-cv-01081-CJC-DFM

CLASS ACTION

**DECLARATION OF MICHAEL P.
 SOUSA IN SUPORT OF PLAINTIFFS’
 UNOPPOSED MOTION FOR
 PRELIMINARY APPROVAL**

Hon. Cormac J. Carney
 Hearing Date: April 22, 2019
 Time: 1:30 p.m.
 Courtroom: 7C

1 I, Michael P. Sousa, declare:

2 1. I am one of the attorneys for Plaintiff Sean Hartranft, and for the
3 putative class members herein, together “Plaintiffs” or the “Settlement Class.” I
4 submit this declaration in support of Plaintiffs’ Unopposed Motion for Preliminary
5 Approval of the Class Action Settlement and Certification of the Settlement Class. I
6 am licensed to practice law in California and this Court as well as all federal courts
7 in this state. If called as a witness, I could and would competently testify to the
8 matters herein from personal knowledge.

9 2. I graduated from San Diego State University in 2000, *cum distinctione*,
10 with a degree in Philosophy and Classical Studies. I subsequently attended the
11 University of San Diego School of Law and graduated in 2003. I was admitted to
12 the California State Bar in the same year. I am licensed to practice law in all
13 Federal Courts within California, as well as the Northern District of Illinois.

14 3. From 2004 to 2005, I worked at the law firm of Grady and Associates
15 as an associate attorney, practicing solely within the field of employment law.
16 While working for Grady and Associates, I represented employee-plaintiffs
17 exclusively. In 2005, I formed the Law Offices of Michael P. Sousa, which became
18 the Law Offices of Michael P. Sousa, APC in 2008. Since the formation of my law
19 firm, I have focused my practice on representing plaintiffs in civil litigation,
20 primarily in employment law and consumer advocacy cases (such as cases
21 involving the Telephone Consumer Protection Act [“TCPA”]). My firm represents
22 plaintiffs in individual and class action litigation, and I have served as both lead
23 counsel and as co-counsel in wage and hour and consumer class actions, both in
24 California State Court and Federal Court. My office has helped resolve over
25 \$25,000,000.00 of class action claims on behalf of thousands of class members. I
26 have been lead or co-counsel in the following cases:

27 *Smith, et al. v. California Pizza Kitchen, Inc.*, San Diego Superior
28 Court Case No. 37-2008-00083992-CU-OE-CTL (co-counsel);

1 *Graham, et al. v. Overland Solutions, Inc.*, U.S. Southern District of
2 California Case No. 3:10-cv-00672-BEN-BLM (co-counsel);

3 *Kolasa v. Md7, LLC*, San Diego Superior Court Case No. 37-2011-
4 00091641-CU-OE-CTL (lead counsel);

5 *David Hutchins, Daniel Gonzalez and Peter Kaapcke v. Midas*
6 *International Cooperation*, San Diego Superior Court Case No. 37-2012-00083884-
7 CU-OE-CTL (co-counsel);

8 *Greg Smith and Michelle Ayala v. Red Robin International, Inc.*, U.S.
9 Southern District of California Case No. 14CV1432 JAH (BGS) (co-counsel);

10 *Silva v. International Business Machines Corp.*, San Diego Superior
11 Court Case No. 37-2008-00089729-CU-OE-CTL (co-counsel);

12 *Shamoon, et al. v. AMPM Cleaning Solutions, LLC*, San Diego
13 Superior Court Case No. 37-2014-00000845-CU-OE-CTL (lead counsel);

14 *German, et al. v. Santa Ana Creek Development Company*, San
15 Bernardino Superior Court Case No. CIVDS1722515 (defense counsel);

16 *Robert Jordan, Sean Halbert, Dana Skelton and Vanessa Ruggles v.*
17 *Nationstar Mortgage, LLC*, U.S. Northern District Court of California Case No.
18 3:14-cv-00787-WHO (TCPA, co-counsel);

19 *Larry Diek v. Loec, Inc., et al.*, Orange County Superior Court Case
20 No. 30-2015-00783974-CU-BT-CXC (consumer, co-counsel);

21 *Justin Bradley v. Safe Haven Security Service, Inc.*, San Diego
22 Superior Court Case No. 37-2015-000019576-CU-OE-CTL (co-counsel).

23 4. I have over ten years of experience litigating class-action and complex
24 cases (primarily for plaintiffs), and can evaluate the risks, uncertainties, and
25 probabilities of success, as well as evaluate the labor and costs required to
26 successfully litigate class actions.

27 5. I was involved with this case from its inception in 2015, as were my
28 co-counsel (Law Offices of Douglas J. Champion, APC and Bisnar | Chase LLP). I

1 assisted in investigating and evaluating the class claims alleged in the lawsuit, I
2 participated in the litigation of these claims, reviewed and analyzed documents and
3 data produced by Defendants, and participated in mediation and settlement of this
4 matter.

5 6. As set forth in more detail in the Declaration of Douglas J. Campion
6 filed herewith, for the last three-and-a-half years, I and my co-counsel have
7 diligently litigated this matter for Plaintiff and the Class. We initially investigated
8 the claims and the potential Defendants, prepared the complaint, and subsequently
9 engaged in substantial motion practice (including motions to stay and a motion to
10 dismiss). We propounded discovery on Defendants and responded to their
11 discovery, both formally and informally. Both Parties met and conferred multiple
12 times in order to acquire the needed documents and interrogatory responses to
13 properly evaluate the case. Discovery continued throughout the mediation process,
14 during which Defendants revealed financial information regarding their solvency.
15 After a settlement was reached, we propounded confirmatory discovery to confirm
16 that the methodology used to determine the class size and membership was
17 accurate, thereby confirming the resolution was fair to the Settlement Class.

18 7. The Class Representative, Sean Hartranft, was involved throughout the
19 litigation process. He assisted in the initial investigation of the claims and was
20 required to respond Defendants' Special Interrogatories and Requests for
21 Production, as well as Defendants' subsequent attempts to obtain more information
22 informally. Mr. Hartranft was "on call" during the full day of mediation, and made
23 himself available throughout the years to provide us with information, answer our
24 questions, or be briefed on the status of the case.

25 8. This case was mediated before the Hon. Edward A. Infante (Ret.) in
26 July, 2017. Throughout the mediation we attempted to negotiate a standard,
27 common-fund settlement as to all class members. Defendants were adamant that
28 they would not be financially able to pay any type of common-fund settlement and

1 provided financial documents to the mediator and to our side to support their
2 position. If we insisted on such a common-fund settlement, it appeared a
3 bankruptcy might be imminent. As a result, the case did not settle at that mediation
4 session. After that mediation session, and with the assistance of Judge Infante, we
5 eventually were able to resolve the case with a structure that did not require a
6 common-fund but instead utilized certificates that would allow the Class to either
7 purchase goods at Defendants' stores or redeem them for cash. Given that there
8 was not sufficient funds for a common-fund settlement or that a bankruptcy might
9 follow, we reached what we believe to be a fair and adequate settlement for the
10 Class. We were able to agree on terms involving certificates that were favorable to
11 the Class members and not contrary to existing case law, (e.g., that the certificates
12 had no expiration date, were freely transferrable, did not require other purchases,
13 and importantly could be redeemed for cash). As a result, we felt that the
14 settlement is fair to the Class.

15 9. Given the risks inherent in complex class-action litigation, and given
16 the very real risk of financial insolvency for Defendant Apogee, the settlement is
17 eminently reasonable and of unquestionable value to the Class. I respectfully
18 request that the Court approve the settlement as fair and reasonable. Each claimant
19 will be able to choose either \$25.00 cash or \$75.00 worth of goods at any of
20 Defendants' 145 stores. The amounts are fixed and will not be reduced regardless
21 of the claim redemption rate. If a claimant opts to buy goods, the certificates do
22 not require the claimant to spend any of his or her own money; being thrift stores,
23 Defendants' stores have a wide variety of goods for under \$75.00. There is no
24 restriction on what items a claimant can buy or when the certificate can be used:
25 they are "good as cash." The certificates are freely transferrable and have no
26 expiration date. Because Defendants rely upon local donations, call recipients were
27 screened geographically, so most of the Class will be in proximity to one of
28 Defendants' stores.

1 10. The statutory damages in this case – \$500.00 for a call (\$1,500.00 if
2 proven by the plaintiff to be willful) – are generally too small for class members to
3 go through the trouble of filing individual actions. Unlike debt collection cases
4 where plaintiffs are called dozens or even hundreds of times, the class members in
5 this case at most received one or perhaps no more than a handful of calls from
6 Defendants. Accordingly, it is reasonable to assume that if this case is not
7 approved for settlement, the vast majority of class members will obtain no redress
8 whatsoever.

9 11. If this settlement did not take place, undoubtedly Defendants would
10 vigorously litigate this case. There are many areas of uncertainty: whether Plaintiff
11 or class members gave consent, appeal of any favorable verdict, and, of course, the
12 ever-present specter of Defendants’ potential bankruptcy. In such a case rife with
13 uncertainty, my years of experience combined with common prudence militate
14 towards resolution on the fair terms outlined above.

15 I declare under penalty of perjury under the laws of the United States
16 of America and the State of California that the foregoing is true and correct;

17 Dated: March 7, 2019

By: /s/ Michael P. Sousa

Michael P. Sousa

LAW OFFICES OF MICHAEL P. SOUSA, APC

By: /s/ Michael P. Sousa

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Attorney for Plaintiff and the Proposed Class