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Class Counsel for Plaintiff and the Settlement Class

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DISTRICT

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

Plaintiff,

v.

TVI, Inc. d/b/a SAVERS, INC.; and
APOGEE RETAIL, LLC,

Defendants.

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

CLASS ACTION

**DECLARATION OF MICHAEL P.
SOUSA IN SUPORT OF PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES,
EXPENSES AND INCENITVE AWARD**

Judge: Hon. Cormac J. Carney

Date: October 21, 2019

Time: 1:30 p.m.

Place: Courtroom: 7C

1 I, Michael P. Sousa, declare:

2 1. I am one of the attorneys for the 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 Plaintiff’s Motion for Attorneys’ Fees, Expenses
5 and Incentive Award (“Fees Motion”). I am the principal of the Law Offices of
6 Michael P. Sousa, APC, and the sole owner and only attorney in my law firm. I
7 worked on this case from initial contact with Plaintiff Sean Hartranft, through filing
8 of the initial complaint, motion practice, discovery, and settlement negotiations. I
9 shall continue working through the final approval and beyond until the Settlement
10 terms have been carried out. I, along with my Co-Counsel, have also been appointed
11 to act as Class Counsel on behalf of the Settlement Classes. I am licensed to practice
12 law in California and this Court as well as all federal courts in this state. If called as
13 a witness, I would competently testify to the matters herein from personal knowledge.

14 2. My firm, along with Bisnar|Chase, LLP and the Law Offices of Douglas
15 J. Champion (collectively “Class Counsel”), respectfully move the Court for an Order:
16 1) awarding to Class Counsel the sum of \$900,000.00 for attorneys’ fees and costs,
17 with the award inclusive of all litigation costs incurred by Class Counsel; and 2)
18 awarding an incentive award payable to Plaintiff and Class Representative Sean
19 Hartranft in the amount of \$5,000.00 for the efforts incurred in litigating this matter.
20 Defendants have stated in the Settlement Agreement that they will not oppose any
21 fees, costs, and incentive award requests that do not exceed the amounts sought herein.

22 3. My work on this case began in June 2015. After interviewing Plaintiff
23 Sean Hatranft, conferring with co-counsel, and investigating the viability of the claims
24 and Defendant’s background, the first complaint was filed in July 2015. My firm,
25 along with Bisnar|Chase and the Law Offices of Douglas J. Champion, has continually
26 litigated this matter over the past approximately four years. The Final Approval
27 hearing date is set for October 21, 2019, and I anticipate that my firm and my Co-
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1 counsel will continue working on this case throughout 2019 (and perhaps into 2020),
2 ensuring that the terms of this settlement and the Court's Final Order are enforced.

3 4. As set forth in the Declaration of Douglas J. Campion in support of the
4 Fees Motion ("Campion Dec."), this case was not settled with a common fund.
5 Settlement discussions began in earnest at a full-day mediation on July 6, 2017 with
6 the Honorable Edward A. Infante, a mediator with extensive experience mediating
7 large Telephone Consumer Protection Act ("TCPA") cases. Although the case did
8 not settle at the mediation, the Parties continued to attempt to resolve the matter in a
9 satisfactory manner. Due to the precarious financial state of Defendant (*cf.* Campion
10 Dec. ¶ 5.), we negotiated a settlement that provided significant relief to the class in
11 the form of a voucher for goods at Defendant's stores or a cash payment (at the option
12 of each class member). Each aspect of this settlement, from the amounts of the
13 vouchers and cash payments, the terms and conditions of the vouchers (e.g., regarding
14 expiration and transferability), to the selection of claims administrator, was hard-
15 fought through arms'-length negotiation. Judge Infante continued to provide what
16 assistance he could give throughout the negotiation process. Counsel for Defendant
17 vigorously represented the interests of Defendants throughout the settlement process.
18 As a result, the Parties believe they have reached an excellent alternative to a common
19 fund settlement that provides substantial and valuable relief to each class member.
20 This positive result was the result of nearly four years of work on the part of Class
21 Counsel.

22 5. After the Parties reached an agreement on the substantive portion of the
23 Settlement regarding the relief to the Settlement Class, we began negotiating the
24 amount of attorney fees and costs. Like every other detail of the settlement, this too
25 was hard-fought. We finally agreed to a sum that Defendant would not oppose and
26 represented fair compensation for the years of time spent on this case by Class
27 Counsel. The Settlement is not contingent on any Court approval of a specific amount
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1 of fees, costs, or incentive award.

2 6. Throughout my work this matter, I have tracked my time via
3 contemporaneous billing entries. I have reviewed in detail the billing records and
4 compiled a summary of the time spent by my individual firm. To date I have worked
5 360.5 hours on this case. A summary of my hours is attached to my declaration as
6 Exhibit 1. At a rate of \$500.00 per hour, that equals a firm lodestar of \$180,250.00. I
7 anticipate that there will be an additional 20 – 30 hours expended by my firm on the
8 final approval motion, supervising the claims process, fielding inquiries from the
9 claims administrator and class members, responding to objections, and overseeing
10 final distribution of proceeds to class members.

11 7. I have been an attorney for over 14 years, and approximately ten of
12 those years involved class action litigation. In my experience, the amount of time
13 expended on this case (*viz.*, approximately 90 hours per year of litigation for my firm)
14 is reasonable and typical of this type of litigation. These hours were required in order
15 to properly investigate the claims, conduct discovery, oppose Defendant's attempts to
16 stay and dismiss the matter, and engage in extensive settlement discussion. I have
17 spent my entire legal career in California, specifically Southern California, and have
18 been either co-counsel or lead counsel in class actions in both state and Federal court
19 involving wage and hour claims, consumer class actions, and TCPA class actions. I
20 am familiar with the amount of work required by these cases as well as the hourly
21 rates of attorneys who litigate complex class action litigation such as the instant case.
22 My requested fee of \$500.00 per hour is well within the range of fees requested by
23 similarly experienced attorneys and justified given my years of experience litigating
24 class action cases and the favorable result we were able to achieve considering
25 Defendant's financial condition.

26 8. I and my co-counsel have agreed to work on this matter on a contingency
27 basis. Unlike defense attorneys, we have not been compensated in any way
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1 throughout the previous years of litigation. We have also expended thousands of
2 dollars in costs litigating this matter. Of the total requested costs of \$14,335, my
3 office has spent \$3,891.70. I have reviewed the total costs incurred by my office and
4 those of my co-counsel and can confirm that they were all necessary and proper for
5 the resolution of this case. These costs are attached to my declaration as Exhibit 2.
6 The prime costs incurred were for the mediation with the Honorable Edward A.
7 Infante (as well as incidental travel costs), and I believe that this mediation and the
8 continued assistance of Judge Infante was crucial in achieving resolution of this case.

9 9. As stated previously, my office and co-counsel agreed to work on this
10 matter on a contingent basis. It was never certain that we would be paid in this matter,
11 and there was a very real likelihood that we could expend hundreds of hours of work
12 and thousands of dollars of expenses without any reimbursement or compensation.
13 There are many stages during the course of litigation at which this time and money
14 would have been lost: the case could have been dismissed via a motion to dismiss (as
15 Defendant attempted in this matter); discovery could reveal that the claims were not
16 viable; the class size could have been so small as to not make the case viable; or
17 Defendant could dispose the matter through summary judgment. Even if this case
18 proceeded to trial, there was the very real risk of not prevailing at time of trial, and
19 even if we succeeded, appeals could have drawn out the final outcome for years. Even
20 obtaining a final judgment is not a guarantee of compensation, as there is the ever-
21 present risk throughout the course of the case that the Defendant could declare
22 bankruptcy. At no time, then, was a recovery certain, and this motion for attorney
23 fees and costs is our sole means of being compensated for our work.

24 10. Because I am a sole practitioner, at any one time my office can only
25 handle a small number of cases, particularly class action cases like this involving a
26 large number of class members and complex legal theories. I have necessarily been
27 forced to forego other work in order to reserve a sufficient amount of time and
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1 financial resources to devote to this case. Notwithstanding all these risks and the
2 present costs, I and my co-counsel continued to work on this matter because we
3 believed in our client and the justness of the claims.

4 11. The contingent nature of this case and the circumstances of this litigation
5 as set out in my declaration and the declarations of co-counsel justify the application
6 of a lodestar multiplier. The contingent nature of recovery and the loss of the present
7 value of not only the time spent in this matter but the work foregone as set forth in
8 paragraph 10 *supra* justify the application of a lodestar multiplier. The multiplier
9 sought – 1.3 – is reasonable and well within the range of multipliers sought in Federal
10 Court in similar class action litigation. Where a fee must be based on lodestar, a court
11 may adjust it upward by using a positive multiplier to reflect “reasonableness” factors,
12 including, (1) quality of representation, (2) class benefits, (3) complexity and novelty
13 of issues presented, and (4) risk of nonpayment. *In re Bluetooth Headset Products*
14 *Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011). “Multipliers can range from 2 to
15 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001).
16 Given that there is still more work to be performed in the case, the total number of
17 hours worked will be higher than the amount as of the present declarations and
18 accordingly the actual multiplier would be lower than 1.3.

19 12. In addition to the attorney fees and costs we are requesting, we also
20 request an incentive reward of \$5,000.00 for Plaintiff and Class Representative Sean
21 Hartranft. Because I was involved in this litigation from its beginning, I have worked
22 with Mr. Hartranft personally over the last four years and can testify to his efforts in
23 resolving this matter. At all times Mr. Hartranft has been generous with his time and
24 efforts, spending hours communicating with me and co-counsel by phone and e-mail,
25 reviewing discovery requests and producing documents, participating in settlement
26 discussions (including being “on-call” and available for the full-day mediation), and
27 reviewing and preparing his declaration for preliminary approval. Mr. Hartranft has
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1 at all times put the interests of the class above his own, as evidenced by his refusal of
2 Defendant's Rule 68 for the full value of his individual claims. Had he accepted the
3 offer, this entire litigation would have terminated and none of the class members
4 would have received any compensation whatsoever. An enhancement of \$5,000.00 is
5 in line with my experience regarding class representative enhancements; if anything,
6 it is in fact on the low-end of typical enhancements. To my knowledge, Mr. Hartranft
7 has no conflicts with any other Class member.

8 **EXPERIENCE OF LAW OFFICES OF MICHAEL P. SOUSA, APC**

9 13. I am the Principal of the law firm of Law Offices of Michael P. Sousa,
10 APC. I graduated from San Diego State University in 2000 with a degree in
11 Philosophy and Classical Studies. I graduated from the University of San Diego
12 School of Law in 2003 and was admitted to the California State Bar in 2003.

13 14. From 2004 to 2005, I worked at the law firm of Grady and Associates
14 as an associate attorney, practicing solely within the field of employment law. While
15 working for Grady and Associates, I represented employee-plaintiffs exclusively. In
16 2005, I formed the Law Offices of Michael P. Sousa, which became the Law Offices
17 of Michael P. Sousa, APC in 2008. I began litigating class actions in 2008, and have
18 since went on to litigate wage and hour, consumer, and TCPA class action cases. In
19 addition to class action cases, my firm represents plaintiffs and defendants in
20 individual cases, primarily wage and hour, discrimination, and wrongful termination
21 cases.

22 15. My office has helped resolve over \$25,000,000.00 of class action
23 claims on behalf of thousands of class members. I have been lead or co-counsel in
24 the following cases:

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

27 b. *Graham, et al. v. Overland Solutions, Inc.*, U.S. Southern District of
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EXHIBIT 1

Fee Summary Chart for Law Offices of Michael P. Sousa, APC

Table 1

Attorney	Task:	Total Hours Spent on Task:	TOTALS
Michael P. Sousa	1. Case Investigation/Factual Research/Legal Research	54.8	
	2. Interviewing/Communication with Plaintiff and Class Members	6.8	
	3. Emails/Conference Calls/Meetings with Co-Counsel and/or Opposing Counsel	27.7	
	4. Pleadings/Briefs/Pre-Trial Motions	35.9	
	5. Written Discovery/Depositions/Document Production and Review/Other Pre-Trial Discovery	42.2	
	6. Communication with Experts/Expert Reports/Expert Discovery	0.0	
	7. Litigation Analysis /Strategy	7.9	
	8. Settlement Discussions / Mediations and Related Preparation/ Settlement Documents	139.9	
	9. Preliminary Approval including briefs, supporting documents, discussions	45.3	
			Hours: 360.5 Amount: \$180,250

Total:	Hours: 360.5 Amount: \$180,250
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EXHIBIT 2

Law Offices of Michael P. Sousa, APC
Summary of Costs

Pacer Fees	\$ 241.40
Contract Attorney (legal research)	\$ 246.00
Postage	\$ 0.92
Mediation	\$ 2,483.33
Hotel	\$ 297.08
Flight	\$ 547.97
Taxi	\$ 75.00
	\$ 3,891.70