

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL KAISER-NYMAN, individually
and on behalf of a class of all persons and
entities similarly situated,

Plaintiff

vs.

FIRST CHOICE PAYMENT SOLUTIONS
G.P., d/b/a SEKURE MERCHANT
SOLUTIONS

Defendant.

Case No. 1:17-cv-05472

Honorable Thomas M. Durkin

**AFFIDAVIT OF ANTHONY I. PARONICH IN SUPPORT OF
PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS,
AN INCENTIVE AWARD AND INCORPORATED MEMORANDUM IN SUPPORT**

1. I make this affidavit in support of the Plaintiff's Motion for Attorneys' Fees, Costs and An Incentive Award.

Background and Litigation Specifics

2. It is undisputed that the Defendant's dialing system does not "create" or generate the telephone numbers it dials. Instead, it takes the telephone numbers that Defendant has purchased from Dun & Bradstreet, as outlined above, and calls them when Defendant's telemarketers execute a computer command to begin the calling campaign.

3. Class Counsel accepted the possibility that, given the class period going back several years before the suit was filed, and the fact that businesses often purge their call records on a regular basis, necessary class call data would likely be difficult to obtain or even destroyed, potentially obliterating any ability to identify class members and ultimately obtain class-wide

relief. In fact, here, the calling records of contacts to the putative class was only recovered after the dialing provider for the Defendant was involved through third party discovery. This was a necessary step: Sekure only maintained call data for 90 days.

4. Here, Plaintiff's case faced further risk than is typical on class certification in a TCPA case because the Defendant's dialing system used multiple modes, including a "manual" and "preview mode".

5. The Plaintiff faced a risk at certification of not being able to identify which calls were made in certain modes, which was not readily apparent from the telemarketing dialer records of the Defendant.

6. Mr. Kaiser-Nyman has never been a Plaintiff in a TCPA class action prior to the filing of this case and had filed a single small claims court individual TCPA case previously.

7. Mr. Kaiser-Nyman also worked with Class Counsel to investigate the case, stayed abreast of the proceedings through litigation and settlement, and reviewed and approved the proposed settlement.

Attorneys' Fees and Costs

8. Plaintiff's counsel have received no payment for their fees or costs.

9. Plaintiff's counsel's expenses for this litigation were \$19,250.00 for all three firms. A categorical breakdown of those expenses are below:

Filing Fee and Service (Including Service Under the Hague Convention): \$1,847.50

Pro Hac Vice Admission Fees: \$150

Imaging Plaintiff's Devices: \$990

Subpoena Service Fees: \$329

Deposition Exhibit Printing Cost and Electronic Exhibit Setup: \$439.05

Deposition Transcript Cost: 758.10

Mediation fee: \$8,500

Hearing Transcript: \$92.65

Expenses relating to travel for mediation, deposition and hearings, including flights, hotels and meals (4 trips total): \$6,143.70

The expenses requested all fall into the categories outlined above and were all reasonably incurred in pursuing this litigation. Settlement Class Counsel has reviewed the expense records carefully and determined that the expenses were necessary to the successful prosecution of this case. In fact, there were some expenses incurred by Plaintiff's counsel that were left out of the petition, and one of Plaintiff's counsel will be traveling to the final approval hearing and staying at a hotel using rewards points.

Contingent Fee Agreement

10. Class Counsel entered into a Contingent Fee Agreement that would allow counsel for the Plaintiff to recover 33 and 1/3% of the total recovery.

I declare under penalty of perjury under the laws of the state of Massachusetts and the United States of America that the foregoing is true and correct.

EXECUTED in Plymouth, Massachusetts, this 11th day of October, 2018.

/s/ Anthony I. Paronich
Anthony I. Paronich