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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: TRACFONE UNLIMITED  
SERVICE PLAN LITIGATION

Case No. CV 13-3440 EMC

**DECLARATION OF JOHN YANCHUNIS IN  
SUPPORT OF MOTION FOR ATTORNEYS'  
FEES AND COSTS**

Judge: Hon. Edward M. Chen

1 I, John A. Yanchunis, pursuant to 28 U.S.C. §1746, declare as follows:

2 1. I am an attorney duly admitted to practice law in the state of Florida and I have  
3 been permitted to appear in this Court. I practice in the area of consumer class action, and I have  
4 focused my practice in this area for the last 19 years. Before that time, I specialized in complex  
5 litigation. I maintain my practice in Morgan & Morgan's Complex Litigation Group and lead the  
6 National Consumer Class Action and False Claims Act sections. Morgan & Morgan is the  
7 largest exclusively plaintiffs law firm in the state of Florida and one of the largest in the United  
8 States, employing over 250 lawyers and 1600 support staff in offices located in Florida, Georgia,  
9 Mississippi, Tennessee, Kentucky and New York. I and my firm have the financial resources  
10 and legal experience to equalize the playing field in furtherance of justice for our clients.

11 2. Prior to joining Morgan & Morgan in 2011, I was a senior partner at James,  
12 Hoyer, Newcomer, Smiljanich & Yanchunis, P.A., where I managed the firm's nationwide  
13 consumer class action department. Before entering private practice in 1982, I served for two  
14 years as a law clerk for the Honorable Carl O. Bue, Jr., a United States District Judge in  
15 Houston, Texas.

16 3. I am highly regarded nationally for my extensive involvement in class action  
17 litigation. I have served as co-lead counsel in the successful prosecution of the two largest class  
18 action cases in the United States: Fresco v. Automotive Directions, Inc., Case No. 03-61063-  
19 JEM (Fresco I), and Fresco v. R.L. Polk, Case 0:07-cv-60695-JEM (Fresco II) (Southern District  
20 of Florida). Additionally, I have served as lead, co-lead, or class counsel in numerous class  
21 actions in a wide variety of areas affecting consumers, including but not limited to anti-trust,  
22 defective products, life insurance, annuities, privacy, breach of contract, civil rights and unfair  
23 and deceptive acts and practices. I was also Lead Counsel in a successful nationwide class action  
24 wherein I represented securities brokers who had not been paid commissions from the sale of  
25 registered products.  
26

1           4.       Beginning in 2005, and while maintaining a private law practice, I served as lead  
2 counsel for the Florida Department of Financial Services and the Florida Department of  
3 Insurance Regulation (the insurance regulators in the state of Florida) in their investigations of  
4 the insurance industry over issues concerning possible antitrust activity, and other possible  
5 unlawful activity and activities regarding the payment of undisclosed compensation to insurance  
6 brokers. The litigation and these investigations resulted in millions of dollars in restitution being  
7 paid to Florida consumers, and also resulted in significant changes in the way commercial  
8 insurance is sold in the state of Florida and across the country.

9           5.       I lecture frequently on the area of class litigation, and I have served as an expert  
10 to The Florida Bar on the topic of the ethical obligations of a class counsel in class action  
11 litigation.

12           6.       I have been honored with the prestigious “AV” rating by Martindale-Hubbell. A  
13 copy of my resume and the description and qualifications of the attorneys of Morgan & Morgan  
14 Complex Litigation Group’s National Consumer Class Action section is attached as composite  
15 Exhibit “A.”

16           7.       My colleague, J. Andrew Meyer, is also an experienced class action attorney who  
17 has since 2005 focused his practice on consumer class actions on behalf of plaintiffs. Mr. Meyer  
18 has litigated complex class action cases in state and federal courts throughout the country, with  
19 those cases ranging from class actions involving consumer products and consumer protection  
20 statutes, to civil rights class actions and insurance and banking class actions brought on behalf of  
21 consumers. Mr. Meyer has served or been court appointed as class counsel in a number of cases.  
22 Recently, Mr. Meyer was appointed co-lead counsel *In re Collecto, Inc. Telephone Consumer*  
23 *Protection Act (TCPA) Litigation*, Case No. 14-md-2513-RGS (District Court for the District of  
24 Massachusetts), an MDL proceeding involving violations of the TCPA, and co-lead counsel in  
25 *Paugh v. Walgreen Company*, Case No. 12-cv-21229-JEM (District Court for the Southern  
26 District of Florida), a case involving allegations of deceptive trade practices in the labeling of a

1 food product. Mr. Meyer was appointed class counsel *In re Black Farmers Discrimination*  
2 *Litigation*, Case. No. 08-ML-0511-PLF (District Court for the District of Columbia), a case  
3 resulting in a \$1.2 billion settlement for farmers subjected to discrimination by the USDA, and  
4 served as class counsel in *DeHoyos v. Allstate Corp.*, Case No. 01-CA-1010-FB (District Court  
5 for the Western District of Texas), a case involving a class of African-American and Hispanic  
6 insureds alleging racial discrimination in the underwriting of homeowners' insurance. Mr. Meyer  
7 served as a member of the Plaintiffs' Steering Committee in the case of *In Re: Apple iPhone 3G*  
8 *and 3GS "MMS" Marketing and Sales Practices Litigation*, MDL No. 2116 (District Court for  
9 the Eastern District of Louisiana), and in state court in Florida, as Mr. Meyer was appointed as  
10 co-lead class counsel in *Algarin v. Tivoli Community Developers, Inc.*, Case No. 2008-CA-  
11 000193-O (Florida 9th Judicial Circuit Court, Orange County), which involved a class of  
12 homeowners alleging they had been misled into purchasing homes located on a former WWII  
13 bombing range and as co-lead class counsel in *Lieber v. Bank of America, N.A.*, Case No. 2012-  
14 3622-CI-91S (Florida 6th Judicial Circuit Court, Pinellas County), a case involving allegations of  
15 unlawful debt collection activity by a national bank. Mr. Meyer has also been involved in a  
16 number of class action cases brought on behalf of elderly consumers who alleged they were  
17 duped into purchasing certain deferred annuity products, with one notable example being *Healey*  
18 *v. Allianz Life Ins. Co. of North Am.*, Case No. 05-cv-8908 (District Court for the Central District  
19 of California).

20 8. My colleague, Ms. Soffin, has prosecuted numerous state and federal class actions  
21 involving product manufacturers and retailers, deceptive trade practices, privacy violations, and  
22 insurance and banking disputes. Prior to joining Morgan & Morgan, Ms. Soffin served as in-  
23 house counsel for one of Florida's largest employee leasing companies. Ms. Soffin obtained  
24 her undergraduate degree in Finance, with honors, from The Florida State  
25 University. Ms. Soffin earned her law degree from Stetson University College of Law, cum  
26 laude, where she served as a Digest Writer on the Stetson Law Review and was published

1 multiple times in that capacity. Ms. Soffin is admitted to practice in the state courts of Florida  
2 and Georgia, and in the United States District Court for the Middle District of Florida, the United  
3 States District Court for the Southern District of Florida, and the United States District Court for  
4 the Northern District of Georgia. Ms. Soffin has been designated by *Super Lawyers* as a “Florida  
5 Rising Star” in the fields of Class Actions and Mass Torts (2011-2013).

6 9. This declaration is being submitted to support the consolidated Plaintiffs’ motion  
7 for attorneys’ fees, costs and expenses. The declaration supports the professional time, costs and  
8 expenses incurred by me and other attorneys within my firm in the representation of Plaintiff and  
9 the Class, and is up to date as of March 31, 2015. The declaration does not cover, of course, the  
10 additional labor which will be required to respond to calls and inquiries from Class members, to  
11 prepare for and attend the fairness hearing now scheduled for June 23, 2015 before the Court, or  
12 any labor required after the fairness hearing, including if necessary, the defense of the Court’s  
13 Final Judgment on appeal if any such appeal is taken.

14 10. Mr. Browning first contacted Morgan and Morgan in April of 2013 seeking  
15 representation regarding his purchase of several Straight Talk plans. After Mr. Browning  
16 contacted Morgan and Morgan, attorneys and paraprofessionals working within the Complex  
17 Litigation Group began an investigation into the Defendants’ business practices. This  
18 investigation included visits to Defendant Walmart’s stores, as well as to other retail outlets  
19 selling TracFone products, for purposes of reviewing and taking inventory the various products  
20 being offered to consumers by Defendants, viewing the specific representations being made by  
21 Defendants, and purchasing exemplars of Defendants’ products. Morgan and Morgan’s  
22 investigation also included extensive research regarding the specific content of Defendants’  
23 representations and regarding consumer complaints about TracFone’s allegedly “unlimited” data  
24 plans, both on-line and through interviews. Morgan and Morgan also investigated Defendants’  
25 terms of service for its unlimited talk, text, and data plans and the methods by which those terms  
26 of service were conveyed to consumers including Mr. Browning. Morgan and Morgan began

1 identifying potential experts that would be necessary to support a class action case and  
2 researched the case law for possible claims , including the remedies obtainable with regards to  
3 those claims , and the case law regarding the enforceability of prohibitions on class actions in  
4 arbitration provisions contained within consumer contracts of adhesion.

5 11. Mr. Browning commenced his action against Defendants through the filing a  
6 complaint against Tracfone Wireless, Inc. and Wal-Mart Stores, Inc. in the United States  
7 District Court for the Southern District of Florida, Case No. 13-cv-22881, on August 12, 2013.  
8 The Complaint in Mr. Browning's initial action asserted, among other things, that Tracfone and  
9 Wal-Mart violated the Florida Deceptive and Unfair Trade Practices Act, codified at Florida  
10 Statutes Sections 501.201 et seq., by engaging in the deceptive and misleading marketing and  
11 sale of certain Tracfone branded phones and "unlimited" service plans. Mr. Browning's original  
12 complaint was brought on behalf of a class of Florida residents only and was limited to Straight  
13 Talk branded products.

14 12. Even after filing suit on behalf of Mr. Browning, Morgan and Morgan's inquiry  
15 into the underlying facts and circumstances of the case continued. During the course of Morgan  
16 & Morgan's investigation it was determined that Defendants' conduct with regard to the  
17 misleading marketing and sale of the Straight Talk brand phones under the TracFone name also  
18 extended to TracFone's Net10, TelCel America and Simple Mobile branded cell phone service  
19 plans.

20 13. On November 11, 2013, Plaintiff sought leave to file an Amended Complaint,  
21 attaching to his request a copy of the proposed amended pleading. The United States District  
22 Court in Florida granted the Motion for Leave to File an Amended Complaint on November 13,  
23 2013, directing Plaintiff to separately file the proposed pleading within five days. Accordingly,  
24 on November 18, 2013, Plaintiff filed and served his Amended Complaint.

25 14. As with his initial complaint, Plaintiff Browning's Amended Complaint focused  
26 on Defendants' deceptive an unfair trade practices in the marketing and sale of TracFone

1 branded cell phone service plans as providing “unlimited” data when, in reality, each of those  
2 plans are subject to a number of different limiting conditions that were not disclosed or were  
3 inadequately disclosed to Plaintiff and Class Members. The Amended Complaint sought  
4 monetary, declaratory and injunctive relief on behalf of Plaintiff, individually, and a putative  
5 class of purchasers of Defendants’ “unlimited” Straight Talk, Net10, TelCel America and Simple  
6 Mobile branded cell phone service plans throughout the United States. In the Amended  
7 Complaint, Plaintiff sought to certify a nationwide class of persons pursuant to Federal Rule of  
8 Civil Procedure 23(a), (b)(2), and (b)(3). Like the initial complaint, the Amended Complaint  
9 included claims against Defendants for violations of the Florida Deceptive and Unfair Trade  
10 Practices Act, Breach of Express Warranty and Unjust Enrichment, bases upon Defendants’  
11 uniform marketing campaign for “unlimited” service plans offered under the Straight Talk,  
12 Net10, TelCel America and Simple Mobile brands.

13 15. While the parties began exploring the possibility of resolution of the claims on  
14 a class wide basis shortly after the Complaint was filed, Morgan and Morgan still took a  
15 number of steps to develop the facts of the case while settlement negotiations continued,  
16 including propounding discovery requests and taking a deposition of a TracFone corporate  
17 representative. Indeed, in response to the Mr. Browning’s request for the production of  
18 documents, Defendants produced several thousand pages of materials to Plaintiff. Defendants  
19 also provided Mr. Browning with verified written responses to interrogatory requests, and  
20 in December of 2013, J. Andrew Meyer, with the assistance of Rachel Soffin, took the  
21 deposition of Karen Levine, the Senior Vice President of Finance at Tracfone. During that  
22 deposition, Ms. Levine testified, among other things, about the potential size of the class,  
23 about the uniformity of TracFone’s business practices with respect to data usage as well as  
24 throttling, suspension and termination of customer accounts, and about the books and  
25 records of the Defendant and information Defendant maintains about class members. The  
26 deposition of Mr. Browning was also taken.

1           16. Along with these discovery efforts, the parties jointly retained mediator  
2 Rodney Max, a highly skilled and experienced mediator with a proven track record for  
3 resolving complex class action litigation, to mediate their settlement discussions. The  
4 parties conducted two, full day, in person mediation sessions to explore settlement. The  
5 initial, full-day mediation was held on December 2, 2013. The second, full day mediation  
6 was held on December 16, 2013.

7           17. Following these mediation sessions, the parties, through their counsel, prepared a  
8 term sheet which memorialized the terms of their agreement reached during mediation. This  
9 term sheet was filed with the Court on December 23, 2013. (Doc. No. 44). Thereafter, the  
10 parties turned to the task of negotiating additional details necessary to implement the substantive  
11 terms outlined in the parties' term sheet, culminating in a finalized Settlement Agreement, which  
12 the Parties submitted to the Court in the *Browning* case then pending in the Southern District of  
13 Florida.

14           18. On March 19, 2014, Judge Marcia Cooke of the Southern District of Florida  
15 transferred the *Browning* case to this District, where it was assigned to this Court. The parties in  
16 the *Browning* case submitted an amended Browning Settlement on May 30, 2014, seeking  
17 preliminary approval of same. While the motion for preliminary approval of the amended  
18 Browning Settlement was pending in this Court, the parties in all of the cases reached an  
19 agreement in principle to resolve all cases in this Consolidated Action. The declarations of my  
20 co-counsel provide additional detail regarding the work done by counsel for the Plaintiffs in  
21 reaching this global resolution of all the cases in this Consolidated Action as well as the  
22 negotiations with the FTC and the Parties efforts to coordinate the FTC consent decree with the  
23 Consolidated Action through joint redress.

24           19. Defendants responded to each of the complaints in the Consolidated Action by  
25 filing motions to compel arbitration. Defendants' arbitration motions in the *Hansell*, *Gandhi*,  
26 and *Blaqmoor* cases remain pending, subject to further briefing which has been stayed.



1 Defendants' arbitration motion in the *Browning* case was taken off calendar after the parties in  
2 *Browning* filed the initial Browning Settlement.

3 20. The Settlement that has been preliminarily approved by this Court is the product  
4 of extensive, arms-length negotiations between the parties. The parties engaged in two full-day  
5 mediation sessions with Prof. Eric Green of Resolutions, LLC, the first on September 15, 2014  
6 and the second on October 30, 2014. With Prof. Green's assistance, the parties were able to  
7 reach an agreement in principle on key deal terms during the second session. The parties agreed  
8 that a class settlement would be entered into in conjunction with the resolution of a then-pending  
9 investigation of TracFone's practices by the FTC, which resolution TracFone was also in the  
10 process of negotiating. The parties agreed, subject to Court approval, to the creation of a single  
11 \$40 million Settlement Fund that would be used in the resolution of both the Action and the  
12 FTC's investigation, with such funds to be disseminated to Class Members pursuant to the terms  
13 of the class settlement and as approved by the Court. After an agreement in principle was  
14 reached on the merits, the parties, with the assistance of Prof. Green, reached an agreement in  
15 principle regarding Class Counsel's request for attorneys' fees and expenses.

16 21. Subsequent to the mediation, the Parties worked hard on finalizing settlement  
17 papers, conferred extensively with the FTC regarding how best to coordinate the Settlement in  
18 the Consolidated Action and FTC Settlement, and worked closely with the Claims and Notice  
19 Administrator to design a robust notice program.

20 22. The following is a compilation of professional time incurred by attorneys with  
21 Morgan and Morgan Complex Litigation Group representing Plaintiff and the Class, as reflected  
22 by the books and records of Morgan and Morgan, from the point Morgan and Morgan first began  
23 representing Mr. Browning, through March 31, 2015:

24 **MORGAN & MORGAN COMPLEX LITIGATION GROUP**

Attorney	Hours	Rate	Total
John A. Yanchunis	395.9	\$900.00	\$355,770.00
J. Andrew Meyer	591.6	\$600.00	\$354,960.00
Rachel Soffin	310.1	\$500.00	\$155,050.00

Sophia Lynn	7.5	\$350.00	\$ 4,025.00
		<b>Lodestar</b>	<b>\$869,805.00</b>

23. Paragraph 20 above lists the current hourly rates for each attorney which reflect the regular rates charged by my firm for those persons' services in non-contingent matters and/or which have been approved by court awarding attorneys' fees in other class or complex litigation. In fact, my rate of \$900 per hour was recently approved by Judge Jon S. Tigar of the Northern District of California in the matter of *Dyer, et. al. v. Wells Fargo Bank, N.A.*, Case No. 13-cv-02858-JST. The \$900 per hour rate which I charge for my time is commensurate with hourly rates charged by my contemporaries around the country, including the rates charged by lawyers with my level of experience who practice in the area of class action litigation. Similarly, the rates charged for the other lawyers reflected in paragraph 20 are commensurate with hourly rates charged by attorneys with similar levels of experience who practice in the area of class action litigation. Moreover, as I have been retained as an expert on attorneys' fees in other class cases and as a part of my legal education, I routinely survey hourly rates charged by lawyers around the country in published surveys, and review continuously as a part of my continuing education, opinions rendered by courts on attorneys' fee requests. Based upon this research and my expertise, I believe my rate and the rates charged for other Morgan and Morgan attorneys as reflected in paragraph 20 are reasonable and within the range of lawyers with similar levels of experience and class action expertise.

24. The time reflected in Paragraph 20 includes all the work performed by Morgan and Morgan attorneys since first undertaking representation of Plaintiff Browning. I, along with J. Andrew Meyer, Rachel Soffin, and Sophia Lynn, have represented Mr. Browning and the Settlement Class in prosecuting the claims of the Settlement Class, including taking discovery, engaging in mediation and assisting in the documentation of the settlement. These tasks have included, among other things, meeting with Plaintiff Browning and investigating the business practices of the Defendants to gather the facts and analyze potential claims; researching the theories of recovery and the impact of the arbitration clauses contained within certain of

1 Defendants' terms of service; developing a litigation plan; drafting the Complaint and Amended  
2 Complaint on behalf of Mr. Browning; communications with counsel for Defendant; preparing a  
3 case management report and attending a case management conference before the Court;  
4 propounding and engaging in discovery, including the review of documents; preparing for and  
5 taking the deposition of a corporate representative of Defendant; keeping Plaintiff advised of the  
6 progress of the case, including face to face meetings with the client, and numerous phone calls  
7 and email exchanges with Plaintiff; preparing Plaintiff for his deposition and attending his  
8 deposition, responding to discovery served on Plaintiff, researching possible defenses and the  
9 law in Florida and the Eleventh Circuit as well as the law in California and the Ninth Circuit;  
10 preparing for and attending the several mediation sessions; documenting the settlement  
11 agreement and documents in support of preliminary approval of the settlement; overseeing the  
12 implementation of the Notice program, including communication with the Claims and Notice  
13 administrator; responding to inquiries from Class members; conferences with co-counsel and  
14 Defendants' counsel relating to the issues arising prior to and during the implementation of the  
15 settlement; conferences with co-counsel, Defendants' counsel, the FTC, and the Claims and  
16 Notice Administrator relating the Notice program, the development and implementation of a  
17 website to provide information to the Class regarding the Settlement and allow for electronic  
18 submission of claims; legal research, drafting and preparation of the various documents and  
19 pleadings relation to approval of the Settlement and the motion for attorneys' fees and costs and  
20 awards for the class representatives; communicating with class members who contacted Class  
21 Counsel regarding the Settlement; reviewing documentation provided by Defendants' counsel  
22 with regard to inquiries raised by Class members; and conferences with the Claims and Notice  
23 administrator in order to assist in the timely filing of necessary declarations in support of the  
24 entry of the Final Judgment and Order in this cause.

25 25. In addition to the time expended, my firm has also incurred \$27,432.65 in  
26 expenses which were reasonably and necessarily committed to the prosecution of the litigation.

1 These expenses are broken down as follows:

<u>Expense Category</u>	<u>Total</u>
Photocopies/color copies/printing	\$ 2,518.00
Postage/courier/facsimile/long distance	\$ 281.70
PACER/Westlaw Charges	\$ 302.00
Court Reporter Fees	\$ 8,260.75
Mediation Fee to Mediator, Rodney Max	\$ 6,325.00
Mediation Fee to Mediator, Eric Green	\$ 8,202.13
Filing Fees/Pro Hac Fees	\$ 1,315.00
Service of Process Fees	\$ 120.00
Investigation expense	\$ 108.07
<b>Total Expenses:</b>	\$27,432.65

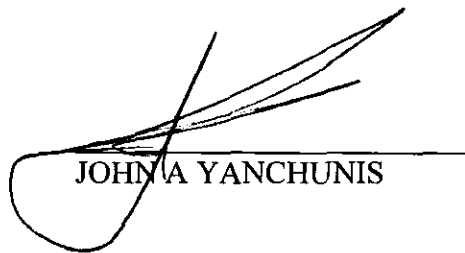
10  
11 26. The above expenses pertaining to this case are reflected in the books and records  
12 of this firm. These books and records are prepared from expense vouchers, check records, and  
13 other documents and are an accurate record of the expenses.

14 27. The time that the Morgan and Morgan Complex Litigation Group has spent on  
15 this litigation has been completely contingent on the outcome, and the Morgan and Morgan  
16 Complex Litigation Group has not been paid for any of its time expended in prosecuting this  
17 litigation, nor has it been reimbursed for any of its expenses incurred in this litigation.  
18 Moreover, the time spent by the Morgan and Morgan Complex Litigation Group on this  
19 litigation could have been spent on other fee-generating work and required the Morgan and  
20 Morgan Complex Litigation Group to turn down other work so that the lawyers involved in  
21 prosecuting this litigation could devote the necessary resources to do so effectively and  
22 zealously. Finally, all reasonable efforts were made in this case to avoid duplication of work  
23 among Class Counsel, as Class Counsel worked cooperatively to ensure tasks were clearly  
24 assigned to firms and personnel appropriate to the task in question. Similarly, within the Morgan  
25 and Morgan Complex Litigation Group, all reasonable efforts were made to ensure tasks were  
26

1 assigned to appropriate professionals within the firm and that there was no duplication of efforts  
2 among. Accordingly, I believe that the amounts sought by Plaintiffs in their motion for  
3 attorneys' fees are reasonable and that Plaintiffs seek fair and reasonable compensation for  
4 undertaking this case on a contingency basis, and for obtaining the very substantial relief for  
5 Plaintiffs and the Class.

6 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing  
7 is true and correct. Executed this 20th day of April, 2015 at Tampa, Florida.

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JOHN A YANCHUNIS