

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**MELBOURNE POFF, and BARBARA POFF,
on behalf of themselves and all others similarly
situated,**

Plaintiffs,

v.

**PHH MORTGAGE CORPORATION, itself
and as successor by merger to OCWEN LOAN
SERVICING, LLC,**

Defendant.

Case No. 4:20-cv-04018

**DECLARATION OF JAMES L. KAUFFMAN IN SUPPORT OF PLAINTIFFS' FEE,
EXPENSE, AND SERVICE AWARD APPLICATION**

I, James L. Kauffman, declare:

1. I am a partner at Bailey & Glasser LLP, and I am admitted to practice before this Court as counsel of record for Plaintiffs and the Settlement Class in this case. I have personal knowledge of all of the facts set forth in this Declaration unless otherwise stated, and I am competent to testify to these facts if called on to do so.

BAILEY & GLASSER LLP

2. Bailey & Glasser LLP was founded in 1999 and has an established reputation for successfully prosecuting and defending multimillion dollar cases, including complex class actions. With seventeen offices across the country, our lawyers routinely handle high-stake litigation and other lawyers call upon our firm routinely because of our unique blend of resources and trial experience.

3. My firm, Bailey & Glasser LLP, has obtained millions of dollars in restitution and debt forgiveness for consumers by successfully asserting state and federal consumer credit law claims on their behalf. A partial listing of those cases includes the following:

- *Krakauer v. Dish Network, L.L.C.*, Case No. 1:14-cv-00333 (M.D. N.C.) (\$20.5 million jury verdict in a class action trial against Dish Network, alleging Dish was liable for more than 51,000 telemarketing calls placed by a defunct DISH dealer to persons whose telephone numbers were on the National Do Not Call Registry).
- *Tadepalli v. Uber Technologies, Inc.*, Case 3:15-cv-04348 (N.D. Cal.) (100% refunds made in class action settlement for California Uber riders charged approximately \$2.2 million in “airport fee tolls” which Uber did not pay to California airports).
- *Wieland v. Bring Care Home, Inc.*, C.A. No. ESCV2013-01380 (Essex County, Mass.) (class action settlement for failure to pay all hours worked).
- *Thomas v. Home Credit Corp., Inc.*, 11-CVS-1116 (Vance County, N.C.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- *Desai v. Charvat*, Civil Action No. 1:11-cv-1925 (N.D. Ill.) (\$15 million TCPA class settlement).
- *Roberts v. Walgreen Co., et al.*, Civil Action No. 12-C-337 (Circuit Court of Mercer County, West Virginia) (wage payment class settlement).
- *Glover v. Bank of America, N.A.*, C.A. No. 13-40042-TSH (D. Mass.) (class action settlement for Massachusetts borrowers regarding late fees).
- *Powers v. Santander Consumer USA, Inc.*, Civil Action No. 12-cv-11932-TSH (D. Mass.) (consumer class action resulting in the establishment of a \$750,000 settlement fund and \$20 million in debt relief).
- *Pirillo v. PNC Mortgage Corp.*, Civil Action No. 11-C-751 (Circuit Court of Monongalia County, West Virginia) (consumer class action settlement).
- *Ross v. CitiFinancial Auto Ltd.*, Case No. 12-1173-TJC (M.D. Fla.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- *Morris v. Merck Sharp & Dahme Corp.*, Civil Action No. 3:11-cv-00882 (S.D. W. Va.) (wage payment class action settlement totaling \$750,000).
- *Hall v. Capital One Auto Fin., Inc.*, Case No. 08-1181 (N.D. Ohio) (\$37 million settlement on behalf of state-wide class of car owners sent allegedly flawed repossession notices).
- *Brailsford v. Jackson Hewitt, Inc.*, Case No. 06-00700 (N.D. Cal.) (\$672,000 settlement on behalf of class of California consumers).
- *Hardwick v. Rent-A-Center, Inc.*, Civil Action No. 3:06-0901 (S.D. W. Va.) (class action settlement worth more than \$5 million, alleging violations of state Consumer Goods Rental Protection Act).

- *Triplett v. NationStar Mortgage, LLC*, Civil Action No. 3:11-cv-238 (S.D. W. Va.) (loan servicing case settled for \$1.5 million).
- *Shonk v. SG Sales Co.*, Case No. 07-C-1800 (Circuit Court of Kanawha County, West Virginia) (\$2.4 million nationwide settlement of class action brought under the Telephone Consumer Protection Act).
- *Lowe v. Ford Motor Credit*, Case No. 99 CVF 15806 (Cuyahoga County, Ohio) (\$22 million settlement on behalf of state-wide class of car owners subject to flawed repossession practices).
- *Muhammad v. National City Mortgage, Inc.*, Case No. 2:07-cv-00423 (S.D. W. Va.) (\$700,000 settlement of West Virginia loan servicing class action alleging National City Bank charged late loan-payment fees in violation of state law).
- *Brailsford v. Jackson Hewitt*, Case No. C 06-00700 CW (N.D. Cal.) (class action against Jackson Hewitt, Inc. for class of California consumers who purchased the tax preparer's refund anticipation loan product, settled for \$672,000).
- *Dunlap v. Wells Fargo Financial West Virginia, Inc.*, Case No. 04-C-101 (Lincoln County, W. Va.) (predatory lending class action for over 100 West Virginia mortgage borrowers, settled for just over \$9 million, including more than \$4.9 million write down in mortgage balances, \$4.15 million in cash, and credit repair).
- *Cummins v. H & R Block, Inc.*, Case No. 03-C-134 (Kanawha County, W. Va.) (in a case litigated for five years in venues ranging from the West Virginia trial and appellate courts, to federal district courts in West Virginia and Illinois, to the United States Supreme Court, firm lawyers served as lead counsel in winning a \$62.5 million multistate class action settlement against H&R Block. The case involved first-impression claims relating to the application of West Virginia's credit-services organization statute to Block's refund anticipation loan product. Other firms across the country litigated cases against Block alleging similar claims, without success, for more than ten years. West Virginia's share of the settlement was \$32.5 million).
- *Malacky v. Huntington Nat'l Bank*, Case No. CV 03 491420 (Cuyahoga County, Ohio) (\$15 million settlement in favor of state-wide class of car owners sent flawed repossession notices).
- *Anderson v. Provident Bank*, Civil Action No. 04-C-199 (Circuit Court of Mercer County, West Virginia) (predatory mortgage lending class action settled for \$8.1 million on behalf of 140 class members).
- *Mey v. Herbalife Int'l, Inc.*, Civil Action No. 01-C-263 (Circuit Court of Ohio County, West Virginia) (\$7 million nationwide class action settlement alleging violations of the federal Telephone Consumer Protection Act).
- *Cooley v. F.N.B. Corp.*, Case No. 10010 of 2003, C.A. (Lawrence County, Penn.) (\$14 million settlement on behalf of state-wide class of car owners allegedly deprived of post-repossession disclosures).
- *Dillon v. Chase*, Civil Action No. 03-C-164-W (Circuit Court of Hancock County, West Virginia) (\$3.3 million consumer class action settlement).

- *In re Household Lending Litig.*, Case No. C 02-1240 CW (N.D. Cal.) (\$172 million settlement on behalf of nationwide class of home mortgage borrowers injured by predatory mortgage lending practices).
- *Curry v. Fairbanks Capital Corporation*, Case No. 03-10875-DPW (D. Mass.) (\$55 million settlement on behalf of nationwide class of borrowers subject to predatory loan servicing practices).
- *Deem v. Ames True Temper, Inc.*, Civil Action No. 6:10-cv-01339 (S.D. W. Va.) (\$405,000 class action settlement in an ERISA action).

EXPERIENCE

4. I am licensed and in good standing to practice law in the State of Florida, State of Arkansas, and District of Columbia. I have been a member of the Arkansas Bar since 2003 after I obtained my J.D. from the University of Florida Levin College of Law in December 2002. For more than 20 years, I have served as class and appellate counsel in a wide variety of cases including deceptive trade practices, securities fraud, ERISA, and consumer protection. I am a member of Public Justice, the Florida Bar Association, the Arkansas Bar Association, and the American Association of Justice (AAJ).

5. I represented a Florida class in one of the first ever filed class action lawsuits in the country to challenge Convenience Fees, also known as Pay-to-Pay Fees, *Montesi v. Seterus, Inc.*, Case No. 50-2015-CA-010910-XXXX-MB (Fla. Cir. Ct. Palm Beach Cty.). *Montesi* was heavily litigated and resulted in class certification over the defendant's opposition. It also resulted in a \$1.75 million class settlement for Florida borrowers, which represented 35% of the amount collected by Seterus during the class period.

6. Class Counsel in this matter are among a handful of law firms litigating cases involving Pay-to-Pay Fees across the country and are in the forefront of that litigation. Together with the attorneys at Carney Bates & Pulliam, I have been appointed as co-lead class counsel in several other actions that successfully challenged a loan servicer's practice of collecting Pay-to-Pay fees. These include: *Caldwell v. Freedom Mortg. Corp.*, No. 3:19-cv-02193, ECF No. 118

(N.D. Tex., Dec. 17, 2021) (granting final approval of settlement); *Torliatt v. Ocwen Loan Servicing, LLC et. al*, No. 3:19-cv-04303-WHO (N.D. Cal.) (same); *Phillips v. Caliber Home Loans, Inc.*, No. 0:19-cv-02711-WMW-LIB (D. Minn.) (same); *Wilson v. Santander Consumer USA, Inc.*, No. 4:20-cv-00152-KGB (E.D. Ark.) (same); and *Langston v. Gateway First Bank*, No. 5:20-cv-01902 (C.D. Cal.) (same).

7. I was also appointed class counsel in several other actions that successfully challenged Pay-to-Pay Fees. These include: *Silveira v. M&T Bank*, No. 2:19-cv-06958-ODW (C.D. Cal.) (settlement granted final approval); *Pierce v. Statebridge Company, LLC*, No. 1:20-cv-00117-WO-JLW (M.D. N.C.) (same); *Lembeck v. Arvest Central Mortgage Co.*, 3:20-cv-03277-VC (N.D. Cal.) (same); *Elbert v. RoundPoint Loan Servicing*, No. 3:20-cv-00250-MMC(N.D. Cal.) (same); *Fernandez v. Rushmore Loan Servicing*, No. 30-2020-01128156-CU-AT-CXC (Cal. Sup. Ct., Orange Cty.) (same); and *Thomas-Lawson v. Carrington Mortgage Co.*, No. 1:19-cv-03567-CCB (D. Md.) (same).

8. I continue to represent consumers in class actions that challenge the imposition of Pay-to-Pay Fees. These include: *Williams v. Lakeview Loan Servicing, LLC et al.*, Case No 4:20cv-01900 (S.D. Tex.); *McFadden v. Nationstar Mortgage Co. d/b/a Mr. Cooper*, No. 1:20-cv-00166-EGS (D.D.C.); *Desimone v. Select Portfolio Servicing, Inc.*, No. 1:20-cv-03837 (E.D.N.Y.); *Nguyen v. ECSI d/b/a Heartland Payment Systems*, No. 2:22-cv-01743 (W.D.Pa.) and *Jones v. PHH Mortgage Corporation*, No. 1:23-cv-01040 (D.N.J.).

ATTORNEYS' FEES AND COSTS

9. Attorneys from Bailey & Glasser, LLP (“BG”) started working on this case in 2020 when the original complaint in this matter was filed. BG investigated the facts and legal claims asserted in this matter, as well as in another, related action filed in *Torliatt v. Ocwen Loan Servicing, LLC et. al*, No. 3:19-cv-04303-WHO (N.D. Cal.).

10. Class Counsel undertook the case on a contingent basis under an agreement with the Plaintiffs that Class Counsel would seek a percentage-based fee of up to one third of any recovery. Class Counsel have not received any compensation for their work to this point.

11. Bailey & Glasser, LLP attorneys and paralegals spent more than 262 hours litigating these three actions to date, preparing, researching, briefing, litigating, settling, and administering this case and the issues therein. A summary of the hours litigated is as follows:

Name	Title	Hours	Rate	Lodestar
Kauffman, James L.	Attorney	76.7	\$829	\$63,584.30
Ryan, Elizabeth A.	Attorney	52.8	\$910	\$48,048.00
Mayer, Nicole C.	Attorney	34.7	\$829	\$28,766.30
Marshall, Jonathan R	Attorney	13.7	\$829	\$11,357.30
Kipnis, Patricia M.	Attorney	12	\$829	\$9,948.00
McClay, Mary E.	Paralegal	35.4	\$225	\$7,965.00
Pierre, Vanessa K.	Paralegal	36.9	\$225	\$8,302.50
Grand Total		262.2		\$177,971.40

12. Attorneys and paralegals from BG worked closely with our co-counsel Carney Bates and Pulliam (CPB) on this case. Work was divided relatively evenly between the firms on these cases to avoid duplication of efforts. On all cases, our firms endeavored to divide work based on which firm's attorneys had the most experience in a given area. In addition, the reported time was adjusted in the exercise of billing judgment, omitting time spent that may have been duplicative, or non-essential.

13. These rates are within the range of rates recently approved by and reported to courts in similar cases in this jurisdiction and others class actions, and are consistent with the attorney and paralegal hourly rates listed in the Laffey Matrix, accessible here:

<http://www.laffeymatrix.com/see.html>.

14. Even after the Settlement was reached between the parties, Class Counsel devoted significant hours to finalize the Settlement Agreement and all related settlement documents.

15. Notably, the time summarized above does not include any additional work that will be performed responding to additional class member inquiries about the settlement, finalizing and filing the attorney fee petition, drafting the final approval filings, attending the final approval hearing, or assisting the settlement administration with issues that may arise related to the distribution of the Settlement Fund.

16. Time records were kept contemporaneously. For each task performed, staff accounted for their time in 1/10th of an hour (6-minute) increments or shorter, and included a brief narrative description of the work performed. Staff did not “block bill.”

17. BG attorneys reviewed the time records for duplicative or erroneous entries. Any timekeeper with less than 10 hours was omitted.

18. The hourly rates shown for the attorneys at Bailey & Glasser LLP are up to our 2022 rates. I personally have several hourly clients who pay me rates of \$600-950 per hour or more for attorneys and \$300 per hour for paralegals of the same experience as those who performed work in this matter. Elizabeth Ryan’s current hourly rate paid is \$975 per hour.

19. BG’s time in this case includes time spent on the related case *LaShell Bell, Ursula Williams, and Melbourne and Barbara Poff v. PHH Mortgage Corp.*, Civ. No. 1:20-03187, filed in the District of New Jersey on March 24, 2020. That case involved the same parties as the parties to this Action and the same claims. Her case was ultimately dismissed voluntarily and a new case with Ms. Williams and the Poffs was filed, and was ultimately transferred to this Court. In addition to litigating the merits of this case, Class Counsel attended *three* separate mediation sessions that occurred over more than two years involving the claims asserted here. After the

second mediation was unsuccessful, Defendant reached a settlement with proposed class representatives in Florida. *See Morris v. PHH Mortg. Corp.*, Case No. 0:20-cv-60663 (S.D. Fla.). The *Morris* settlement requested to resolve Texas borrowers' claims and required amendment of all Texas borrowers' loan notes to *allow* PHH to collect Pay-to-Pay fees as high as \$19.50 in the future. Class Counsel intervened successfully in *Morris* on behalf of Texas class members and opposed the settlement. A bipartisan group of thirty-one state Attorneys General joined the Texas intervenors in opposing the settlement, which was eventually withdrawn. These actions allowed Class Counsel to pursue this Action here and mediate a third time with Defendants and reach the settlement pending before the Court which contains no such note amendment.

20. Each member of the Settlement Class who does not opt out will receive their pro rata share of the Settlement Fund, as well as the benefit of the non-monetary injunctive relief. The amount recovered represents 32.5% of the Convenience Fees paid by Settlement Class Members during the Class Period.

21. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the fair resolution of this matter. The lodestar reflected in the above extract does not include all of the time to be devoted to preparing for and appearing at the final approval hearing or dealing with post-hearing matters.

22. I anticipate that Class Counsel will devote substantial additional time to this case after the date of this Declaration, including: (1) finalizing this application; (2) preparing for and attending the final approval hearing; (3) monitoring the claims and distribution process; corresponding with the claims administrator; (4) managing the extended payment plan; (5) ensuring compliance with the injunctive relief; and (6) responding to Class Member inquiries.

23. Bailey & Glasser, LLP also carried some of the costs in this litigation—taking on this risk for the putative class members. Specifically, Bailey & Glasser incurred \$5,846 in unreimbursed case-related expenses. These expenses include expert fees, court fees, and deposition transcripts. The vast majority of the expenses were incurred as mediation expenses and hiring a local counsel to intervene in *Morris*. These expenses do not include any legal research, copying or postage costs, which were expenses incurred by Class Counsel but are not sought to be reimbursed. An itemized list of Bailey & Glasser LLP’s expenses is as follows:

Description	Total
Arbitrators/Mediators	\$1,700.00
Court Fees	\$1,023.50
Local Counsel	\$3,000.00
Outside Delivery Services	\$122.89
Grand Total	\$5,846.39

24. Over the course of the litigation, Plaintiffs invested significant time in collaborating and communicating with Class Counsel about the case, reviewing case filings, gathering and reviewing documents to respond to Defendant’s discovery requests.

25. I declare under penalty of perjury under the laws of Texas that the foregoing is true and correct.

Executed this 24th day of July 2023 in Washington D.C.

/s/ James L. Kauffman
James L. Kauffman