

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 RANDALL K. PULLIAM IN SUPPORT OF PLAINTIFFS' FEE,
EXPENSE, AND SERVICE AWARD APPLICATION**

I, Randall K. Pulliam, declare:

1. I am a partner at Carney Bates & Pulliam, PLLC ("CBP"), 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.

2. To briefly highlight CBP's extensive experience in class action and complex litigation, CBP has served or is serving as co-lead counsel in the following cases: *Caldwell, et al. v. Freedom Mortgage Co.*, No. 3:19-cv-02193-N (N.D. Tex.) (Pay-to-Pay class action, settling for \$2,250,000 and receiving final approval in December 2021); *Phillips, et al. c. Caliber Home Loans, Inc.*, 19-cv-02711-WMW-LIB (D. Minn.) (Pay-to-Pay class action settling for \$5,000,000, which represented 29.39% of the aggregate Pay-to-Pay fees collected from the settlement class); *Williams v. State Farm Mutual Automobile Insurance Company*, 4:11-cv-00749-KGB (E.D. Ark.) (resulting in a settlement of \$21.7 million with 7,635 individuals

receiving 100% recovery plus six percent prejudgment interest while releasing no claims or rights (other than named plaintiffs)); *Ebarle, et al. v. LifeLock, Inc.*, 3:15-cv-00258 (N.D. Cal.) (class action on behalf of customers of the identity theft protection service, resulting in a nationwide settlement of \$81 million that was granted final approval in September 2016); *Wayne Miner et al. v. Philip Morris USA Inc.*, Case No. 60CV-03-4661 (Pulaski Co. Cir. Ct.) (class action brought on behalf of Arkansas smokers over claims that the defendant misrepresented the safety of its “light” cigarette products, which settled in 2016 for \$45 million).

3. Additionally, CBP served as lead counsel in *Econo-Med Pharmacy, Inc. v. Roche Diagnostics Corporation*, 1:16-cv-00789-TWP-MPB (S.D. Ind.), representing a class of pharmacies in a Telephone Consumer Protection Act (“TCPA”) litigation resulting in a \$17 million settlement, which was granted final approval on September 21, 2017. CBP also served as lead counsel in *ARcare, Inc. v. Qiagen North America Holdings, Inc., et al.*, Case No. 43CV-17-46 (Lonoke Co. Cir. Ct.), representing a class of pharmacies in a TCPA litigation resulting in a \$15.5 million settlement, which was granted final approval on December 3, 2018. CBP has also been involved in such notable data breach cases as *In re: The Home Depot, Inc., Customer Data Security Breach Litigation*, 1:14-md-02583-TWT (N.D. Ga.) (serving on Plaintiffs’ Steering Committee), and *In re: Target Corporation Customer Data Security Breach Litigation*, 0:14-cmd-02522-PAM-JJK (D. Minn.) (serving as counsel for lead plaintiff Umpqua Bank).

EXPERIENCE

4. I am licensed and in good standing to practice law in the State of Arkansas, State of Texas and State of Arizona. I have been a member of the Arkansas Bar since 1998, and for more than 20 years I have been appointed as class counsel in more than 100 consumer class actions.

5. Class Counsel in this matter are among a handful of law firms litigating cases involving Convenience Fees across the country and are in the forefront of that litigation. Together with the attorneys at Bailey & Glasser, LLP, 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).

ATTORNEYS' FEES AND COSTS

6. Attorneys from CBP started working on this case in 2020 when the original complaint in this matter was filed. CBP 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.).

7. 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.

8. CBP attorneys and paralegals spent more than 271 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
Randall K. Pulliam	Attorney	74.1	\$910	\$67,431.00
Lee Lowther	Attorney	145.60	\$640	\$93,184.00

Tiffany Oldham	Attorney	16.3	\$775	\$12,632.50
Cass DeCoursey	Attorney	20.8	\$395	\$8,216.00
Jake Windley	Attorney	8.9	\$430	\$3,827.00
Kim Draheim	Paralegal	5.59	\$225	\$1,257.75
Grand Total		271.29		\$186,548.25

9. Attorneys and paralegals from CBP worked closely with our co-counsel Bailey Glasser 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.

10. 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.

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

12. 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.

13. 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."

14. I have reviewed the time records for duplicative or erroneous entries.

15. In addition to litigating the merits of this case, Class Counsel attended *three* separate mediation sessions that occurred over two years. 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 mediate a third time with Defendants and reach the settlement pending before the Court which contains no such note amendment.

16. 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.

17. 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.

18. 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.

19. CBP also carried some of the costs in this litigation—taking on this risk for the putative class members. Specifically, CBP incurred \$2,020.01 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 Carney Bates & Pulliam’s expenses is as follows:

Description	Total
Travel	\$1,226.00
Court and Pacer Fees and PHV applications	\$776.90
Teleconference fees	\$17.11
Grand Total	\$2,020.01

20. 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.

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

Executed this 26th day of July 2023 in Little Rock, Arkansas.

/s/ Randall K. Pulliam
Randall K. Pulliam