

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

BOBBIE PACHECO DYER, and
PATRICIA STALLWORTH on behalf of
themselves and all others similarly
situated,

Case No.: C 13-2858

Plaintiffs,

vs.

WELLS FARGO BANK, N.A.,

Defendant.

DECLARATION OF JOHN YANCHUNIS

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

1. I am an attorney duly admitted to practice law in the state of Florida and I am admitted practice before this Court. I am a partner in the law firm of Morgan & Morgan Complex Litigation Group. I work in the firm's Tampa office where I head the Firm's consumer class action section. I have extensive involvement in representing consumers in class action cases, including in the area of privacy. For example , I have served as co-lead counsel in the successful prosecution of the two largest class action cases in the United States: *Fresco v. Automotive Directions, Inc.*, Case No. 03-61063-JEM (Fresco I), and *Fresco v. R.L. Polk*, Case 0:07-cv-60695-JEM (Fresco II) (Southern District of Florida). Both were filed and settled in this District. Additionally, I have served as lead, co-lead, or class counsel in numerous class actions in a wide variety of areas affecting consumers, including but not limited to anti-trust, defective products, life insurance, annuities and unfair and deceptive acts and practices. I also served as lead counsel the insurance regulators for the state of Florida in connection with their investigations of a number of insurance companies and brokers of allegations of price fixing,

bidding rigging, undisclosed compensation and other related conduct, and negotiated a number of settlements with insurance companies and brokers of those investigations. These investigations resulted in the recovery of millions of dollars for Florida policyholders and the implementation of changes to the way insurance was sold in Florida and throughout this Country. A copy of my resume and description of the qualifications of the attorneys in my department at the firm is attached as composite Exhibit "A".

2. I am one of the attorneys for Plaintiff and the Class in this case. I submit this declaration in support of the motion for conditional certification of the Class, preliminary approval of the settlement, approval of Plaintiff as Class representative and the request for approval as Lead Class Counsel. The facts herein stated are true of my own personal knowledge and if called to testify to such facts, I could and would do so competently.

3. Throughout the pendency of this case, counsel for Plaintiff maintained contact with the Class representative to discuss with him the prosecution of the case. The communications and exchanges with Plaintiff occurred from the initial investigation stage throughout the commencement of the litigation, during its prosecution, and the subsequent mediation at which he was present, and continue today. With the assistance of his counsel, Mr. Browning has been at the helm of this case at all times. He was, and continues to be, focused on the advancement of the interests and claims of the Class over his own interest and he has always been concerned about obtaining a result that was best for the Class.

4. After the Complaint was filed the parties began exploring resolution of the claims on a class wide basis. These discussions were prompted by the parties' desire to avoid the expense, uncertainties and the burden of protracted litigation, and to put to rest any and all claims

or causes of actions that have been, or could have been, asserted against Defendants arising out of the claims raised in the amended complaint.

5. In furtherance of these settlement discussions, the parties took a number of steps. Plaintiff conducted an investigation of facts from outside sources, review documents produced by Defendants and took a deposition of a corporate representative of Defendant TracFone Wireless, Inc. The Declaration of my partner, J. Andrew Meyer, provides additional detail regarding these steps.

6. To facilitate settlement negotiations, the parties agreed to the appointment of Rodney Max as a mediator. Rodney Max is well known to the parties' counsel as a highly skilled and experienced mediator who has mediated many complex cases and class actions, including many class actions in which I have served as class counsel. Mr. Max served as mediator in the Fresco case mentioned earlier in this declaration. After Plaintiff reviewed the extensive materials Defendants produced to him, the parties conducted two face to face mediation sessions on December 2, 2013 and December 16, 2013 in Miami. In these sessions, the parties set forth and discussed their respective positions on the merits of the putative class claims and the potential for a settlement that would involve class-wide relief. The parties exchanged offers and counteroffers and negotiated the points of each vigorously.

7. The parties did not turn to the issue of incentive award for the Plaintiff as Class Representative until after the parties had reached an agreement in principle on the merits of the settlement. The resolution of the issue of incentive award was also reached through the mediation, after which the parties turned their attention to the issue of attorneys' fees, costs and expenses negotiated in good faith to reach a settlement. Further discussions between the parties eventually led to a mediated settlement of the fees and expenses issue.

8. Through the settlement process and before finally entering this Settlement

Agreement, Plaintiff's counsel carefully weighed with the Class Representative: (1) the benefits to Plaintiff and the Class under the terms of this Settlement Agreement, which provide significant injunctive relief to advance the important privacy rights of the Class; (2) the possibility that claims contained in the amended complaint would be forced to arbitration ; (3) the relatively small damages which might have been sustained by the class and the difficulty in calculating those damages; (4) the attendant risks and uncertainty of litigation, especially in complex action such as this involving esoteric areas of the law like the use of data over a wireless device , as well as the difficulties and delays inherent in such litigation including the challenges to certification of a class ; (5) Defendant's vigorous defense of the litigation and continued denial of the claims contained in the Complaint; (6) the desirability of consummating this Settlement Agreement, to ensure that the Class received a fair and reasonable Settlement, without punishing the company; (7) providing Plaintiff and Class Members prompt relief.

9. Following this intense period of negotiation, the parties, by their counsel, entered into a term sheet setting forth the provisions of a settlement (the "term sheet").

10. After execution of the term sheet, the parties continued to meet and communicate with counsel for Defendant regarding the work needed to turn the agreement into a final agreement and to draft and agree upon all the documents necessary to implement the settlement, such as the terms of the class notice, and the creation of the form of notice to be sent to Class Members.

11. In the Settlement Agreement, the parties agreed to a settlement of this action that would involve the certification, for settlement purposes only, of a nationwide class of consumers described with great particularity in the Settlement Agreement. The Settlement Agreement is subject to the approval and determination of the Court as to the fairness, reasonableness and

adequacy of the settlement, which, if approved, will result in final certification of the Class and dismissal of the action with prejudice. It is my opinion that the settlement achieves a result which is fair, reasonable and adequate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of February, 2014 at _____.

JOHN A. YANCHUNIS, ESQ.

JOHN A. YANCHUNIS

Born Columbus, Ohio. Admitted to Florida Bar, 1980, Texas; 1981

EDUCATION

University of Florida, B.A., 1976. Major in political science. Member, Florida Blue Key, Omicron Delta Kappa, Sigma Alpha Epsilon.

South Texas College of Law - J.D., magna cum laude, 1980. Member, Order of the Lytae, Associate Editor-in-Chief and Technical Editor of the South Texas Law Journal, Phi Alpha Delta.

EMPLOYMENT

Morgan & Morgan, P.A.	2011 - present
James, Hoyer, Newcomer & Smiljanich	Shareholder, 2000 to 2011
James, Hoyer, Newcomer, Forizs & Smiljanich, P.A.	Shareholder, 12/97 to 12/99
Blasingame, Forizs & Smiljanich, P.A.	Shareholder, 8/90 to 12/97
Greene & Mastry, P.A.	Shareholder, 1985 to 1990
Greene, Mann, Rowe, Stanton, Mastry & Burton, P.A.	Associate, 1982 to 1985
Honorable Carl O. Bue, Jr., United States District Judge, Southern District of Texas	Law Clerk, 1980 to 1982

PROFESSIONAL ACTIVITIES

The Florida Board of Bar Examiners	Member, 1997 to 2002 Presently an Emeritus Member
<u>Subcommittees:</u>	
Committee on Character and Fitness	Chair, 2000 to 2003 Member, 1998 to 2000
Committee on Petitions	Chair, 1999 to 2000 Member, 1998 to 1999
Committee on Budget	Member, 1999 to 2003
Committee on Questions	Member, 1998 to 2003
Committee on Abstracts of Practice	Chair, 2000 to 2003 Member, 1999 to 2003
Examination Grading	07/2000

The Florida Bar

Subcommittees:

Supreme Court's Judicial Management Council	Member, 2008 to 2011
Recipient of President's Award from the Florida Bar Foundation	2010
Consumer Protection Law Committee	Chair Elect, 2013-2014
Law Library Board of Trustees for the Sixth Judicial Circuit Court of Florida	2011

COURT ADMISSIONS

The Florida Bar – 1981

The State Bar of Texas – 1980

United States Supreme Court

United States Court of Appeals:

Fifth Circuit

Sixth Circuit

Seventh Circuit

Ninth Circuit

Eleventh Circuit

United States District Court, Southern District of Texas

United States District Court, Northern District of Texas

United States District Court, Eastern District of Wisconsin

United States District Court, Western District of Wisconsin

United States District Court, Western District of Tennessee

United States District Court, Middle District of Florida

United States District Court, Southern District of Florida

United States District Court, Eastern District of Michigan

United States District Court, Northern District of Illinois

FLORIDA BAR ACTIVITIES

The Florida Bar Foundation	Board of Directors, 2003 to 2006 Fellow
Special Committee on Multi-Jurisdictional Practice	Chairman, 2001 to 2005
Special Committee on the Enhancement Of the Practice of Law	Member, 1997 to 1998

Board of Governors of The Florida Bar	Member (Representative from the Sixth Judicial Circuit), 1999 to 2003
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Subcommittees

Budget Committee	Member, 2000 to 2003
Multi-Disciplinary Practice Committee	Member, 1999 to 2002
Board Review Committee on Professional Ethics	Member, 1999 to 2002
6 th Circuit Pro Bono Committee	Chair, 1999 to 2000
Ethics Committee	Member, 1997 to 1999
Standing Committee on Simplified Forms	Vice Chairperson, 1998 to 1999 Member, 1996 to 1998
Task Force on the Unlicensed Practice of Law	Member, 1996
Standing Committee on the Unlicensed Practice of Law	Chairperson, 1995 to 1997 Vice Chairperson, 1994 to 1995 Member, 1990 to 1994
Standing Committee on Professionalism	Member, 1991 to 1993
Continuing Legal Education Committee	Member, 1992 to 1992
Public Relations Committee	Member, 1989 to 1990
Board of Governors of Young Lawyers	Member, 1988 to 1992
Division of the Florida Bar, 6 th Circuit Representative	
Unlicensed Practice of Law Committees:	
6A Circuit Committee	Chairperson, 1986 to 1995 Member, 1985
6B Circuit Committee	Chairperson, 1995

I have had the privilege of representing The Florida Bar in a number of aspects, including as special counsel in the prosecution of individuals for The Unauthorized Practice of Law and as follow up in direct criminal contempt proceedings. I have argued before the Florida Supreme Court on behalf of The Florida Bar on a number of occasions - most recently on February 8, 2005, when I argued in support of amendments to the Bar's rules to address issues relating to the practice of law in our state by lawyers admitted in other states. These cases are as follows:

In re Amendments to the Rules Regulating the Florida Bar and The Florida Rules of Judicial Administration, 907 So.2d 1138, 30 Fla. L. Weekly S351 (Fla., May 12, 2005)(NO. SC04-135)

Florida Bar re Revisions to Simplified Forms, Pursuant to Rule 10-2.1(a) of the Rules regulating The Florida Bar, 774 So.2d 611, 25 Fla. L. Weekly S570 (Fla. Jul. 13, 2000)(NO. SC92023)

The Florida Bar v. Eubanks, 752 So.2d 540, 24 Fla. L. Weekly S304 (Fla. June 24, 1999)(NO. 91,084)

The Florida Bar re Advisory Opinion on Nonlawyer Representation in Securities Arbitration, 696 So.2d 1178, 22 Fla L. Weekly S388 (Fla. Jul 03, 1997)(NO. 89,140)

The Florida Bar re Advisory Opinion Activities of Community Ass'n Managers, 681 So.2d 1119, 21 Fla. L. Weekly S328 (Fla. Jul 18, 1996)(NO. 86,929)

The Florida Bar re Amendments to Rules regulating the Florida Bar (Proceedings Before a Referee), 685 So.2d 1203, 21 Fla. L. Weekly S291 (Fla. Jun 27, 1996)(NO. 87,132)

The Florida Bar v. Schramek, 670 So.2d 59, 21 Fla. L. Weekly S51 (Fla. Feb 01, 1996)(NO. 83,873)

The Florida Bar v. Schramek, 616 So.2d 979, 18 Fla. L. Weekly S243 (Fla. Apr 15, 1993)(NO. 77,871)

VOLUNTARY BAR ASSOCIATIONS

St. Petersburg Bar Association	Member, 1996 to 2005
Executive Committee	1996 to 1998 and 2003 to 2005
St. Petersburg Law Library Board of Trustees	Member, 1997 to 1998
Federal Bar Association	Member since 1981
Sixth Circuit committee on Professionalism	Current Member
"AV" Rated by Martindale Hubbell	
Super Lawyer	2009, 2010, 2013

COMMUNITY ACTIVITIES

Elder Law Advisory Board, College of Law and The Center for Excellence in Elder Law – Stetson University College of Law	Member, 2003 to present
Community Law Program	Member
St. Vincent de Paul Society St. Petersburg Downtown Conference	Vice president, 2001
Boy Scouts of America	

Boy Scouts of America

**National Council Member,
Council Representative, 2005
to 2008**

**West Central Family Council
Of The Boy Scouts of America**

**Council President, 2005 to 2007
Member of the Executive
Committee, 2203 to present**

**Skyway District Chairman,
2003 to 2004**

**Cub Scouts
Pack 219**

**Cub Master
Assistant Cub Master
Webelos Den Leader**

Boy Scout

**Committee Chairperson
2001 to 2004**

Troop 219

**Assistant Scout Master
1997 to 2001**

Received the Silver Beaver, 2006; District Award of Merit – Skyway District, 2005