

1 Michael R. Reese (State Bar No. 206773)
2 *mreese@reesellp.com*
3 **REESE LLP**
4 100 West 93rd Street, 16th Floor
5 New York, New York 10025
6 Telephone: (212) 643-0500
7 Facsimile: (212) 253-4272

8 *Co-Lead Counsel for Plaintiffs Ruby Mitchell and Edward J. Kelly and the Classes*

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 RUBY MITCHELL *and* EDWARD J. KELLY,
13 *individually, and on behalf of a class of*
14 *similarly situated persons,*

15 Plaintiffs,

16 vs.

17 INTERO REAL ESTATE SERVICES,

18 Defendant.

Case No. 5:18-cv-05623-BLF

**DECLARATION OF
MICHAEL R. REESE IN SUPPORT OF
PLAINTIFFS’ MOTION FOR PAYMENT
OF ATTORNEYS’ FEES AND COSTS TO
CO-LEAD CLASS COUNSEL AND
PAYMENT OF SERVICE AWARDS TO
THE CLASS REPRESENTATIVES**

Date: October 20, 2022

Time: 9:00 a.m.

Place: Courtroom 3, 5th Floor

Judge: Honorable Beth Labson Freeman

1 I, Michael R. Reese, hereby declare as follows:

2 1. I am the founding partner of Reese LLP, a law firm established in 2008 that
3 specializes in class action litigation on behalf of consumers and small businesses in both federal
4 and state courts throughout the United States. I am a member in good standing of the state bars of
5 California and New York as well as numerous federal courts, including but not limited to the U.S.
6 District Courts for the Northern, Central, Eastern and Southern Districts of California; the
7 Northern, Eastern, Western and Southern Districts of New York; the Northern and Southern
8 Districts of Illinois; the Western and Eastern Districts of Wisconsin; the District of Vermont; the
9 Northern District of Ohio; the Northern and Southern Districts of Texas; and, the District of New
10 Mexico. I am a member of the federal bars for the U.S. Courts of Appeals for the Second, Seventh,
11 Eighth, Ninth and Tenth Circuits, before which I have argued numerous appeals. I am a frequent
12 lecturer on class actions. I am the co-host of an annual law conference where I moderate panels on
13 class action litigation. I currently serve as an adjunct law professor at the Brooklyn Law School,
14 where I teach a class entitled *The Law of Class Actions and Other Aggregate Litigation*. Prior to
15 litigating class actions, I was a prosecutor at the Manhattan District Attorney's Office in New
16 York, New York, where I served as trial counsel in prosecuting white-collar and violent felony
17 crimes.

18 2. I submit this declaration in support of my firm's application for payment of
19 attorneys' fees and reimbursement of expenses in connection with services rendered in this case. I
20 have personal knowledge of the matters set forth herein based upon my active supervision and
21 participation in all material aspects of the litigation.

22 3. My firm is court appointed co-lead counsel in this litigation. My firm has extensive
23 class action experience. My firm has been appointed as class counsel in numerous class actions,
24 including, but not limited to: *Bumpus v. Realty Holdings Corp.*, No. 3:19-cv-03309-JD (N.D.
25 Cal.); *Chin v. RCN Corp.*, No. 08-cv-7349 (S.D.N.Y.); *Cicciarella v. Califia Farms, LLC*, No.
26 7:19-cv-08785-CS (S.D.N.Y.); *Ferrera v. Snyder's-Lance, Inc.*, No. 13-cv-62496 (S.D. Fla.);
27 *Frohberg v. Cumberland Packaging Corp.*, case no. 1:14-cv-0748-RLM (E.D.N.Y.); *Holve v.*

1 *McCormick & Co., Inc.*, case no. 6:16-cv-FPG-MJP (W.D.N.Y.); *Howerton v. Cargill, Inc.*, case
2 no. 13-cv-0336 (D. Hawaii); *Huyer v. Wells Fargo Co.*, 295 F.R.D. 332 (S.D. Iowa 2013); *In re*
3 *General Mills, Inc. Kix Cereal Litig.*, case no. 2:12-cv-00249-KM-MCA (D.N.J.); *In re Hill's Pet*
4 *Nutrition, Inc. Dog Food Products Liability Litig.*, case no. 19-md-02887-JAR (D. Kansas); *Rosen*
5 *v. Unilever United States Inc.*, case no. 09-02563 JW (N.D. Cal.); *Worth v. CVS Pharmacy, Inc.*,
6 case no. 16-cv-00498 (E.D.N.Y.); and *Yoo v. Wendy's Corp.*, case no. 07-4515 (C.D. Cal.) (stating
7 that Reese LLP "has conducted the litigation and achieved the Settlement with skill, perseverance
8 and diligent advocacy").

9 4. As described below in detail, members of my firm have been involved in all aspects
10 of work in this litigation, including, but not limited to, the following: development of the action
11 prior to filing; prosecution of this action from its inception; discovery; extensive motion practice
12 regarding discovery, class certification, and summary judgment; mediation; settlement
13 conferences before the Honorable Chief Magistrate Judge Joseph C. Spero; drafting and finalizing
14 the Settlement Agreement; and, the briefing of the Motion for Preliminary Approval. My firm will
15 also be extensively involved in the briefing of the Motion for Final Approval. Reese LLP has
16 vigorously represented the interests of the Settlement Class Members throughout the course of the
17 litigation and settlement process. Indeed, but for Reese LLP's involvement, it is likely that this
18 matter would not have proceeded in the first place.

19 5. Based on my extensive experience, I believe the Settlement to be an outstanding
20 outcome for class members, and I believe it is fair, reasonable, and adequate under Federal Civil
21 Procedure Rule 23.

1 **REESE LLP EXPENDED SIGNIFICANT TIME AND MONEY ON THE MATTER**

2 **Pre-Litigation Investigation and the Filing of the Complaint**

3 6. Reese LLP is the firm that initiated this matter through one of our clients that
4 contacted us about receiving unwanted telemarketing calls from defendant Intero Real Estate
5 Services (“Defendant” or “Intero”), despite that client being on the National Do Not Call Registry.
6 My firm conducted the initial factual and legal investigation of Defendant’s conduct and
7 determined that it violated the federal Telephone Consumer Protection Act, 47 U.S.C. § 227
8 (“TCPA”).

9 7. Based on my experience at the Manhattan District Attorney’s Office and as an
10 attorney in private practice, I believe the best way to litigate a matter is to conduct a thorough
11 investigation and gather all the facts before initiating an action and filing a complaint. My firm
12 implements that philosophy in the litigation of its cases and did so in this matter.

13 8. In accordance with the above, my firm conducted a thorough investigation of the
14 facts and potential claims.

15 9. In addition, we thoroughly analyzed the legal landscape to determine if Defendant’s
16 conduct violated any laws. In particular, we researched and examined the TCPA and the current
17 legal landscape regarding the TCPA. Throughout the litigation, we have continued to update our
18 research, both on the facts and legal issues, including, but not limited to, potential defenses; the
19 role of third-party auto-dialers; class certification; summary judgment; as well as various other
20 intricacies associated with this type of TCPA class action litigation. We undertook all of this to
21 assess the merits of the potential case, to determine the strength of both the claims and defenses in
22 this matter, and to determine the best manner to pursue this case on behalf of potential class
23 members.

24 **Joint Prosecution Fee Split Agreement**

25 10. After Reese LLP’s investigation, I discussed this potential matter with several firms
26 to work with Reese LLP as co-counsel, and ultimately decided to invite the law firm of Tycko &
27 Zavareei LLP (“TZ”) to join Reese LLP to litigate this matter. In order to join the litigation, TZ

1 agreed to a joint prosecution agreement whereby Reese LLP and TZ would equally split any fee
2 award (*i.e.*, 50% to Reese LLP and 50% to TZ). This fee agreement was later modified to allow
3 the law firm of Bailey & Glasser LLP (“BG”) to join the litigation a few months before trial in
4 order to assist us in settlement discussions and help prepare us for the upcoming trial that would
5 occur if a settlement could not be reached. BG was invited into the case because BG had tried a
6 TCPA case to verdict before a jury. The fee agreement was modified to allow BG into the case
7 and stated that, after reimbursement of court approved expenses, BG would receive 5% of any
8 fees, and the remaining amount would be split equally by Reese LLP and TZ, such that Reese LLP
9 would receive 47.5% of any fees, and TZ would receive the other 47.5%. The clients agreed to this
10 fee split in writing, and the terms of the fee split were part of the Settlement Agreement that has
11 been made available to all class members. *See* Settlement Agreement, ECF No. 277-2, ¶ 15.2
12 (“Class Counsel hereby disclose that they have a joint prosecution agreement (‘JPA’) with a fee
13 split agreement. That agreement is that after Class Counsel are reimbursed for their costs, attorney
14 fees will be split as follows: Tycko & Zavareei LLP: 47.5% of the fees, Reese LLP: 47.5% of the
15 fees; and, Bailey & Glasser, LLP: 5% of the fees.”).

16 **Extensive Motion Practice**

17 11. The Parties engaged in extensive motion practice.

18 12. Notably, Plaintiffs’ Counsel had to engage in significant motion practice during
19 discovery. This involved, but was not limited to, motion practice regarding subpoenas served on
20 Intero real estate agents for which Defendant refused to accept service. *See* ECF Nos. 46, 59, and
21 69.

22 13. Motion practice also involved third-party Mojo Dialing Solutions, LLC (“Mojo”),
23 which refused to produce documents related to calls made on its dialing platforms after being
24 served with a subpoena by Plaintiffs’ Counsel. Plaintiffs’ Counsel were required to file a motion
25 to compel, initially in Puerto Rico, which ultimately was resolved in Plaintiffs’ favor by the
26 Honorable Magistrate Judge Nathanael Cousins. *Chinitz v. Intero Real Estate Servs.*, No. 19-mc-
27 80279 (N.D. Cal.), ECF Nos. 4, 12.

1 14. We also engaged in motion practice regarding apparent deficiencies in Defendant’s
2 discovery production, including failure to produce certain training videos. ECF No. 108.

3 15. The Parties also engaged in significant motion practice regarding class certification;
4 and summary judgment; and a motion to dismiss an amended complaint.

5 16. After extensive discovery (as discussed below), Plaintiffs’ Counsel filed a motion
6 for class certification in 2020. This motion was hotly contested, with both sides submitting expert
7 opinions in support of their positions. The motion was extensively briefed. Ultimately, Plaintiffs’
8 Counsel were successful in their efforts as the class was certified. ECF No. 126.

9 17. Defendant filed a motion for reconsideration, which was denied by this Court after
10 Plaintiffs’ Counsel submitted its opposition. ECF No. 138.

11 18. Defendant also filed a Federal Civil Procedure Rule 23(f) petition with the Ninth
12 Circuit, contesting this Court’s order granting certification. After we opposed the 23(f) petition,
13 *Chinitz v. Intero Real Estate Servs.*, No. 20-80117 (9th Cir. Aug. 17, 2020), ECF No. 3, the Ninth
14 Circuit denied it. ECF No. 143.

15 19. Defendant also opposed our class notice plan, requiring even more motion practice
16 and briefing by us on behalf of the class. ECF Nos. 151, 153.

17 20. On January 21, 2021, Plaintiffs’ Counsel filed a motion for partial summary
18 judgment and Defendant filed a motion for summary judgment. After extensive briefing in support
19 of our partial summary judgment motion, and in opposition to Defendant’s motion for summary
20 judgment, the Court granted our partial motion for summary judgment with respect to the issue of
21 vicarious liability and denied Defendant’s motion in its entirety. ECF Nos. 157, 159 and 161.

22 21. We also had to engage in motion practice regarding substitution of Ruby Mitchell
23 and Edward J. Kelly as named plaintiffs and class representatives after the then named plaintiff
24 and class representative Ronald Chinitz tried to settle the matter on behalf of the class without the
25 involvement of the court appointed Co-Lead Class Counsel. ECF No. 210.

26 22. After the Court granted our motion for substitution of Mitchell and Kelly, and we
27 filed our amended complaint in accordance with this Court’s order, the Defendant moved to

1 dismiss. We opposed the motion to dismiss. The Court then denied the motion to dismiss. ECF
2 No. 221.

3 23. A few months prior to trial, the case settled. We then thoroughly briefed the motion
4 for preliminary approval, which this Court granted on April 7, 2022. ECF Nos. 277, 285.

5 24. Plaintiffs' Counsel is also responsible for briefing a motion for final approval; it
6 will do so and file the motion with the Court on August 5, 2022.

7 **Discovery**

8 25. The Parties engaged in extensive discovery and were on the verge of trial before
9 this matter settled. The Parties engaged in both factual and expert discovery involving the
10 production and review of voluminous documents; interrogatories; and numerous depositions.

11 26. Discovery not only involved the parties in this litigation, but also third-parties.

12 27. All three of the named plaintiffs (Chinitz, Mitchell and Kelly) were deposed in this
13 matter. Additionally, numerous depositions were taken of Defendant (both of the corporation
14 pursuant to Federal Civil Procedure Rule 30(b)(6) and of individuals pursuant to Rule 30(b)(1)).
15 Each side's experts were also deposed.

16 **Trial Preparation**

17 28. The matter was scheduled for trial to commence on November 15, 2021, with a pre-
18 trial conference set for October 14, 2021. Since the case did not settle until September 22, 2021,
19 we had to prepare the pre-trial statement, jury instructions, verdict form, and start drafts of the
20 motions in limine. We also exchanged witness lists, exhibit lists and edits to the pre-trial
21 conference statement with Defendant.

22 **Settlement Discussions**

23 29. The Parties engaged in extensive settlement discussions during the course of this
24 litigation, including through the use of a professional mediator, and several settlement conferences
25 with the Honorable Chief Magistrate Judge Spero.

26 30. On May 21, 2019, the Parties met in person in Oakland, California, before the
27 Honorable Maria-Elena James (Ret.), a professional mediator. In attendance was George V.

1 Granade from Reese LLP and Hassan A. Zavareei from TZ. After the conclusion of the mediation,
2 the matter had not settled, and the Parties continued litigation.

3 31. On April 1, 2021, this Court referred the Parties to Chief Magistrate Judge Spero
4 for a settlement conference. ECF No. 186.

5 32. One of the issues raised by Defendant during the first discussions with Judge Spero
6 was the ability to pay. Judge Spero ordered Defendant to produce financial records. ECF Nos. 192,
7 193. My firm then hired a forensic accounting expert to review the financial documents provided
8 by Defendant that Judge Spero had ordered them to produce.

9 33. The Parties then held a series of settlement conferences with Judge Spero on July
10 21, 2021; September 9, 2021; and September 22, 2021. ECF Nos. 232, 261, 265 and 267. The case
11 settled in principle at the September 22, 2021 settlement conference.

12 34. My firm, along with co-lead counsel, did not negotiate any amount for service
13 awards to the class representatives or payment of fees or expenses to class counsel until **only after**
14 agreement had been reached as to the relief for the class.

15 35. We then worked on the preparation of the settlement agreement and supporting
16 documents and motion papers for preliminary approval (ECF No. 277), which were granted by the
17 Court on April 7, 2022. ECF No. 285.

18 **Involvement of Ruby Mitchell and Edward J. Kelly**

19 36. Class Representatives Ruby Mitchell and Edward Kelly were extensively involved
20 in this case after they were substituted in as named plaintiffs, and both were instrumental to the
21 successful resolution of this matter.

22 37. Both Mitchell and Kelly produced written discovery in response to Defendant's
23 requests. Each also sat for their depositions.

24 38. Both Mitchell and Kelly also participated in the settlement conferences held by
25 Judge Spero, either as a participant (via Zoom, since all participants appeared at the settlement
26 conference remotely due to COVID-19 concerns) or were available via telephone.

27 39. Both Mitchell and Kelly also prepared for the upcoming trial.

1 40. After the case settled on the eve of trial, both Mitchell and Kelly reviewed the
2 settlement agreement and agreed to the settlement agreement in writing.

3 41. In sum, both Mitchell and Kelly were actively engaged in this matter from the
4 beginning of their involvement to now. Without their involvement, it is likely that this matter
5 would not have succeeded.

6 **Reese LLP's Lodestar and Expenses**

7 42. The schedule attached hereto as Exhibit 1 is a detailed summary of the amount of
8 time, by category as required by section VIII of the Standing Order Regarding Civil Cases of the
9 Honorable Beth Labson Freeman, spent by the attorneys of my firm who were involved in this
10 litigation, and the lodestar calculation based on my firm's current billing rates. Time expended in
11 preparing this application for fees and reimbursement of expenses has not been included in this
12 request. In sum, the attorneys of Reese LLP spent 1,537.7 hours on this matter for a lodestar of
13 \$1,609,242.50

14 43. Reese LLP periodically establishes hourly rates for the firm's billing personnel.
15 Reese LLP establishes the rates based on prevailing market rates for comparable attorneys and law
16 firms that have attorneys and staff of comparable skill, experience, and qualifications. Reese LLP
17 obtains information concerning market rates of other attorneys that have similar experience doing
18 similar work from information that appears in court filings by other attorneys in fee submissions;
19 decisions on fee awards (including those of this Court); MDL submissions by class action attorneys
20 in which Reese LLP is appointed class counsel and in charge of submitting lodestar to presiding
21 courts on a monthly basis; national bar publications and other press on attorney fees; and, through
22 a review of prior orders granting Reese LLP attorneys' fees in class action litigation. The
23 information obtained by Reese LLP demonstrates that its rates are in line with the market rates
24 charged by attorneys of comparable experience, skill, and reputation for similar class action and
25 complex litigation work.

26 44. The hourly rates for the partners, other attorneys, and professional support staff in
27 my firm included in Exhibit 1 are the same as the regular current rates that have been used in the

1 lodestar cross check accepted by courts in other class litigation. My current hourly rate is \$1150,
2 which is slightly less than several class action attorneys with similar experience. *See Ford v.*
3 *[24]7.AI, Inc.* case no. 5:18-cv-02770-BLF (N.D. Cal. Jan. 28, 2022) (Judge Freeman approving
4 fee where attorney hourly rate was \$1190).

5 45. My prior rate approved by courts for litigation that ended in 2021 was \$1050 per
6 hour. *Holve v. McCormick & Co., Inc.*, case no. 6:16-cv-06702-FPG (W.D.N.Y. Jan. 11, 2022)
7 (approving fee submission filed in second half of 2021 based on rate of \$1050 per hour). In the
8 first half of 2021, \$975 was my hourly rate used in class action fee applications that were granted
9 in full by the courts. *See Puckett v. Trinity Management Services, Inc.*, case no. CGC-17-558960
10 (San Francisco Superior Court March 12, 2021) (order granting fee request); *In re Hill's Pet*
11 *Nutrition, Inc. Dog Food Products Liability Litig.*, case no. 2:19-md-02887-JAR-TJJ (D. Kansas
12 July 30, 2021) (order granting fee request).

13 46. The increase in hourly rates has been consistent over the years, and consistently
14 approved of by the courts. For example, in 2016, my hourly rate was \$800. That hourly rate was
15 used in the fee application approved of in full in the matter of *Berkson v. GoGo LLC*, case no. 14-
16 cv-1199-JBW (E.D.N.Y. Apr. 5, 2016) (granting fee application in full). In 2017, my hourly rate
17 increased to \$875. That hourly rate was used in the fee application approved of in full in the matter
18 of *In re Frito-Lay North America, Inc. "All Natural" Litigation*, case no. 12-md-02413-RRM-
19 RLM (E.D.N.Y. Nov. 14, 2017) (granting fee application in full). In 2019, my hourly rate increased
20 to \$900. That rate was used in the fee application approved of in full in the matter of *Luib v. Henkel*
21 *Consumer Goods, Inc.*, case no. 1:17-cv-03021-BMC (E.D.N.Y. August 20, 2019) (granting fee
22 application in full). In 2020, my hourly rate increased to \$950. That rate was used in the fee
23 application approved of in full in the matter *Lashambae v. Capital One Bank, N.A.*, case no. 1:17-
24 cv-06406-VMS (E.D.N.Y. October 21, 2020) (granting fee application in full).

25 47. My firm also has reasonably incurred \$155,572.50 in expenses, as shown in Exhibit
26 2 below.

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

Executed this 1st day of June 2022, in New York, New York.

/s/ Michael R. Reese
Michael R. Reese

EXHIBIT 1**REESE LLP LODESTAR**

Task	George V. Granade	Michael R. Reese	Carlos F. Ramirez	Charles D. Moore	Lance Stott	Maurice Hudson
(Billing Rate)	\$1,000	\$1,150	\$1,050	\$850	\$925	\$850
Compl. and Pre-Compl. Investigation	12.1	7.3	0.0	0.0	0.0	13.7
Discovery	285.9	183.4	57.3	0.0	0.0	12.6
Motion Practice (Class Cert. and Related)	97.6	88.5	41.0	0.0	5.0	0.0
Motion Practice (Summary Judgment and Related)	62.3	59.8	0.0	0.0	0.0	0.0
Motion Practice (re New Plaintiffs)	32.6	25.3	0.0	0.0	0.0	0.0
Motion Practice (Preliminary Approval)	42.4	40.1	0.0	0.0	0.0	0.0
Motion Practice (All Other)	24.9	0.0	34.0	13.4	0.0	0.0
Settlement Efforts	39.3	20.1	0.0	7.5	0.0	0.0
Client Communication	21.1	6.5	1.0	0.0	0.0	0.0
Trial Preparation	49.1	0.0	0.0	0.0	0.0	0.0
Miscellaneous (General Admin. Case Work and Attorney Strategy and Discussions)	143.5	75.5	2.9	4.7	13.5	13.8
Total Hours	810.80	506.5	136.2	25.6	18.5	40.1

DECLARATION OF MICHAEL R. REESE IN SUPPORT OF
MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS
Mitchell v. Intero Real Estate Services, No. 5:18-cv-05623-BLF

EXHIBIT 2**REESE LLP EXPENSES**

Category	Amount
Filing Fees / Process Server Fees	\$434.00
Expert Costs	\$82,015.02
Mediation Costs	\$1,500.00
Travel, Lodging, and Meal Costs	\$6,974.48
Discovery Costs (e.g., Court Reporting, Videographer, DRE Records Research)	\$14,649.00
Class Notice Costs (First Class Notice)	\$50,000.00
TOTAL	\$155,572.50