

1 **HYDE & SWIGART**

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8 Attorneys for the Plaintiff and

9 Proposed Settlement Class

10  
11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 **PAUL STEMPLER, Individually**  
14 **and on Behalf of All Others**  
15 **Similarly Situated,**

16 **PLAINTIFF,**

17 **V.**

18 **QC HOLDINGS, INC.,**

19 **DEFENDANT.**

20 **Case No.: 12-cv-01997-BAS-WVG**

21 **DECLARATION OF JOSHUA**  
22 **B. SWIGART IN SUPPORT**  
23 **OF MOTION FOR**  
24 **ATTORNEYS' FEES, COSTS**  
25 **AND INCENTIVE PAYMENT**

26 **DATE:** November 7, 2016

27 **TIME:** 10:30 a.m.

28 **CRTRM:** 4B

**JUDGE:** Hon. Cynthia Bashant

**DECLARATION OF JOSHUA B. SWIGART**

**I, JOSHUA B. SWIGART, declare:**

1. I am one of the attorneys for the plaintiff in this action, Paul Stemple (“Plaintiff”). I am over the age of 18 and am fully competent to make this declaration. I am a member in good standing of the bars of the State of California, Washington State, Michigan and District of Columbia. I am also admitted in every federal district in California and have handled federal litigation in Arizona, Washington, Minnesota, Tennessee and Texas.
2. The declaration is based upon my personal knowledge, except where expressly noted otherwise.
3. I submit this declaration in support of the Plaintiff’s Motion for Attorneys’ Fees, Costs and Incentive Payment in the action against defendant, QC Holdings, Inc. (“Defendant”).
4. I have been preliminarily approved as Class Counsel for the proposed settlement class.
5. Plaintiff’s attorneys have vigorously litigated this action since it was filed on August 13, 2012.
6. I believe that the Parties are fully apprised of the relative strengths and weaknesses of each other’s claims and defenses and the potential risks to each party of pursuing further litigation in this matter, especially following one full-day mediation session and one half-day mediation session.
7. I am unaware of any conflict of interest between Plaintiff and any settlement class member or between Plaintiff and Plaintiff’s attorneys.
8. As a partner at Hyde & Swigart, I have spent incurred 131.5 hours working on this case, which was taken on a contingency fee basis. Specifically, I have incurred approximately 35.4 hours on discovery matters, approximately 3.8 hours preparing to take or defend depositions, approximately 0.7 hours on the Case Management Conference, approximately 1.6 hours preparing

1 third party subpoenas, approximately 0.1 hours reviewing the motion to  
2 extend deadline to complete discovery, approximately 13.7 hours on the  
3 motion for class certification, approximately 0.6 hours on the motion to  
4 continue deadline for class certification, approximately 1.7 hours opposing  
5 the motion to strike expert testimony, approximately 2.1 hours opposing  
6 Defendant's motion for reconsideration of the class certification decision,  
7 approximately 1.5 hours on the application to delay class notice,  
8 approximately 9.2 hours preparing the motion for preliminary approval,  
9 approximately 0.1 hours drafting the pleadings, approximately 1.1 hours  
10 preparing the motion for attorney's fees and costs, approximately 33.8 hours  
11 engaged in mediation and settlement discussions, and approximately 18.1  
12 hours engaged on communications and calendaring deadlines. I anticipate  
13 incurring an additional 18 hours through final approval, which includes  
14 preparing the motion for final approval. Entries were recorded  
15 contemporaneously. Hours incurred by paralegals and support staff at my  
16 office are not included in the fees request.

- 17 9. My law firm, Hyde & Swigart, has incurred \$19,927.13 in costs of litigation  
18 in this matter.  
19

#### 20 **COUNSEL'S EXPERIENCE**

- 21 10. Since my admission to the California bar in 2003, I have been engaged  
22 exclusively in the area of consumer rights litigation, primarily in the area of  
23 fair debt collections, the defense of debt collection lawsuits, and class action  
24 litigation under the Telephone Consumer Protection Act and Fair Debt  
25 Collection Practices Act.  
26 11. My firm, Hyde & Swigart, in which I am a principal, has litigated over 1,200  
27 cases in the past 13 years. My firm has several offices, including in San  
28 Diego, California; Riverside, California; Phoenix, Arizona; Boulder,

1 Colorado; Minneapolis, MN; and Seattle, WA. Hyde & Swigart has  
2 extensive experience in consumer class actions and other complex litigation.  
3 My firm has a history of aggressive, successful prosecution of consumer  
4 class actions, specifically under the Fair Debt Collection Practices Act and  
5 Telephone Consumer Protection Act.

6 12. The hourly rate for my work in this action is \$605.

7 13. I have been approved for an hourly rate of \$595 in *Sherman v. Kaiser*  
8 *Foundation Health Plan, Inc.* 3:13-cv-00981-JAH-JMA, Dkt. No. 58 (May  
9 12, 2015) and *Mount v. Wells Fargo Bank, N.A.*, Case No. B260585 (Court  
10 of Appeal of the State of California, Second Appellate District; Feb. 10,  
11 2016), and impliedly so in *Couser v. Apria Healthcare Inc., et al.*, 13-cv-  
12 00035-JVS-RNB, Dkt. No. 50 (C.D. Cal. March 9, 2015), and *Lemieux v.*  
13 *EZ Lube, Inc. et al.*, 12-cv-01791-BAS-JLB, Dkt. No. 83 (S.D. Cal.). Prior  
14 to those cases, I had been approved for \$545 in *Knutson v. Schwan's Home*  
15 *Service, Inc.*, 3:12-cv-00964-GPC-DHB, Dkt. No. 151 (S.D. Cal. April 1,  
16 2015), *Barani v. Wells Fargo Bank, N.A.*, 3:12-cv-02999-GPC-KSC, Dkt.  
17 No. 32 (S.D. Cal.), *Hoffman v. Bank of America, N.A.*, 12-cv-00539-JAH-  
18 DHB, Dkt. No. 67 (S.D. Cal.), and *Zaw v. Nelnet Business Solutions, Inc.*,  
19 13-cv-05788-RS, Dkt. No. 39 (N. D. Cal.). Thus, I believe my hourly billing  
20 rate of \$605 is justified.

21 **EXPERIENCE RELEVANT TO THE**  
22 **TELEPHONE CONSUMER PROTECTION ACT**

23 14. I have filed and litigated numerous other class actions based on the  
24 Telephone Consumer Protection Act in the past three years. The following is  
25 a non-exhaustive list of other TCPA class actions which I am or have been  
26 personally involved in:

27 a. *Bellows v. NCO Financial Systems, Inc.*, 07-CV-01413-W (AJB)  
28 (S.D. Cal.) (One of the first class action settlements under the TCPA in

1 the nation; Hyde & Swigart served as co-lead counsel; final approval  
2 grated in 2009);

3 b. *Rose v. Bank of America Corporation, et al.*, 11-CV-02390-EJD (N.D.  
4 Cal 2014)(Nationwide TCPA class settlement providing class relief to  
5 over 6.9 million class members, which created a common fund in the  
6 amount in excess of \$32 million dollars in 2014);

7 c. *Gehrich v. Chase Bank, USA, N.A.*, 12-CV-05510 (N.D. IL  
8 2014)(Nationwide TCPA class settlement providing class relief  
9 creating a common fund in the amount of \$34 million dollars, finally  
10 approved);

11 d. *Adams v. AllianceOne, Inc.*, 08-CV-0248 JAH (S.D. Cal) (Nationwide  
12 TCPA class settlement providing class relief of \$40 per claiming class  
13 member resulting in over \$2,500,000 paid to claiming class members;  
14 final approval granted in 2013);

15 e. *Lemieux v. Global Credit & Collection Corp.*, 08-CV-1012 IEG(POR)  
16 (S.D. Cal.)(Co-lead counsel on a national TCPA class settlement  
17 providing class recovery in the amount of \$70 for each claiming class  
18 member; final approval granted in 2011);

19 f. *Gutierrez, et al. v. Barclays Group, et al.*, 10-CV-1012 DMS  
20 (BGS)(Common fund created in the amount of \$8,262,500 based on  
21 the receipt of unsolicited text messages; final approval granted 2012);

22 g. *Knutson, et al. v. Schwan's Home Service, Inc.*, 12-CV-00964-GPC-  
23 DHB (S.D. Cal.)(Heavily contested TCPA class action; final approval  
24 granted on April 1, 2015);

25 h. *Malta, et al. v. Wells Fargo Home Mortgage, et al.*, 10-CV-1290 IEG  
26 (BLM)(Served as co-lead counsel for a settlement class of borrowers  
27 in connection with residential or automotive loans and violations of  
28 the TCPA in attempts to collect on those accounts; obtained a

1 common settlement fund in the amount of \$17,100,000; final approval  
2 granted in 2013);

3 i. *Conner v. JPMorgan Chase Bank, et al.*, 10-CV-1284 DMS (BGS)  
4 (S.D. Cal.) (Currently serving as co-lead counsel for the settlement  
5 class of borrowers in connection with residential loans and TCPA  
6 violations stemming from the collection of those accounts; Settlement  
7 of more than \$11,000,000; finally approved);

8 j. *In Re: Midland Credit Management, Inc., Telephone Consumer*  
9 *Protection Act Litigation*, 11-md-2286-MMA (MDD) (S.D. Cal.)  
10 (Counsel for a Plaintiff in the lead action, prior to the action being  
11 recategorized through the multi-district litigation process;  
12 preliminarily approved for \$18,000,000);

13 k. *In Re: Portfolio Recovery Associates, LLC Telephone Consumer*  
14 *Protection Act Litigation*, 11-md-02295-JAH (BGS)(Counsel for a  
15 Plaintiff in the lead action, prior to the action being recategorized  
16 through the multi-district litigation process);

17 l. *Arthur v. SLM Corporation*, 10-CV-00198 JLR (W.D.  
18 Wash.)(Nationwide settlement achieving the then-largest monetary  
19 settlement in the history of the TCPA: \$24.15 million; final approval  
20 granted in 2012);

21 m. *Lo v. Oxnard European Motors, LLC, et al.*, 11-CV-1009-JLS-MDD  
22 (S.D. Cal.)(Achieving one of the highest class member payouts in a  
23 TCPA action of \$1,331.25; final approval granted in 2012);

24 n. *Sarabi v. Weltman, Weinberg & Reis Co., L.P.A.*, 10-01777-AJB-NLS  
25 (S.D. Cal.)(Approved as co-lead counsel and worked to obtain a  
26 national TCPA class settlement where claiming class members each  
27 received payment in the amount of \$70.00; final approval granted in  
28 2013);

- 1 o. *Barani v. Wells Fargo Bank, N.A.*, 12-CV-02999-GPC-KSC (S.D.  
2 Cal.) (Class action settlement under the TCPA for the sending of  
3 unauthorized text messages to non-account holders in connection to  
4 wire transfers; preliminary approval granted April 2014; finally  
5 approved on March 6, 2015);
- 6 p. *Martin v. Wells Fargo Bank, N.A.*, 12-CV-06030-SI (N.D. Cal.);
- 7 q. *Heinrichs v. Wells Fargo Bank, N.A.*, 13-CV-05434-WHA (N.D.  
8 Cal.);
- 9 r. *Newman v. AmeriCredit Financial Services*, 11-cv-03041-DMS-BLM  
10 (S.D. Cal.) (finally approving TCPA settlement for over \$6,500,000  
11 on March 28, 2016);
- 12 s. *Fox v. Asset Acceptance, LLC*, 14-cv-00734-GW-FFM (C.D. Cal. July  
13 1, 2016) (finally approved TCPA class action for \$1,000,000;  
14 \$200,000 cash and \$800,000 debt relief);
- 15 t. *Abdeljalil v. GE Capital Retail Bank*, 12-cv-02078-JAH-MDD (S.D.  
16 al.) (Class Certification granted and preliminarily approved for  
17 \$7,000,000);
- 18 u. *Barrett v. Wesley Financial Group, LLC*, 13-cv-00554-LAB-KSC  
19 (S.D. Cal.) (Class certification granted);
- 20 v. *Gehrich v. Chase Bank, N.A.*, 12-cv-5510 (N.D. Cal.) (finally  
21 approved for \$34,000,000); and,
- 22 w. *Mount v. Wells Fargo Bank, N.A.*, BC395959 (Sup. Ct. Los Angeles)  
23 (finally approved for \$5,600,000).

24 15. Many of the cases listed above, which have settled, have resulted in the  
25 creation of combined common funds and/or distribution to class members in  
26 the tens of millions of dollars. The outstanding results mentioned above are  
27 a direct result of the diligence and tenacity shown by both myself and Hyde  
28 & Swigart in successfully prosecuting complex class actions.

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**HYDE & SWIGART'S OTHER  
CONSUMER RELATED EXPERIENCE AND RESULTS**

16. Hyde & Swigart has extensive experience in other consumer related issues, including the Telephone Consumer Protection Act, the Fair Debt Collection Practices Act and other related consumer statutes. A brief summary of a non-inclusive list of notable published decisions are as follows:

- a. *Knell v. FIA Card Services, N.A., et al.*, 12-CV-426 AJB (WVG) (S.D. Cal. 2014) (Co-lead counsel on a California class action involving privacy rights under Cal. Penal Code § 632 et seq. Class relief provided for a common fund in the amount of \$2,750,000. Counsel obtained final approval on August 15, 2014);
- b. *Hoffman v. Bank of America, N.A.*, 12-CV-539 JAH (DHB) (S.D. Cal. 2014) (Co-lead counsel on a California class action involving privacy rights under Cal. Penal Code § 632 et seq. Class relief provided for a common fund in the amount of \$2,600,000. Finally approved on November 6, 2014);
- c. *Zaw v. Nelnet Business Solutions, Inc., et al.*, C 13-05788 RS (N.D. Cal. 2014) (Co-lead counsel on a California class action involving privacy rights under Cal. Penal Code § 632 et seq. Class relief provided for a common fund in the amount of \$1,188,110. Final approval granted on December 1, 2014);
- d. *CashCall, Inc. v. Superior Court*, 159 Cal. App. 273 (2008) (Allowing the original plaintiff who lacked standing in a class action to conduct pre-certification discovery of the identities of potential plaintiffs with standing);
- e. *Kight v. CashCall, Inc.*, 200 Cal. App. 4th 1377 (2011) (Co-lead counsel on a class action involving privacy rights under Cal. Penal Code § 632 et

1 seq. Appeals court reversing the trial courts granting of Defendant's  
2 motion for summary judgment after case was certified);

3 f. *Engelen v. Erin Capital Management, LLC*, et al., No. 12-55039 (9th Cir.  
4 2013, not for publication, D.C. No.: 3:10-cv-01125-BEN-RBB)  
5 (Reversing the lower court's granting of summary judgment to the  
6 defendant debt collector on the basis of the bona fide error defense and  
7 remanding for further proceedings);

8 g. *Sherman v. Yahoo!, Inc.*, 2014 U.S. Dist. LEXIS 13286; 13-CV-0041-  
9 GPC-WVG (S.D. Cal.) (TCPA class action where Defendant's motion  
10 for summary judgment was denied holding that a single call or text  
11 message with the use of an ATDS may be actionable under the TCPA);

12 h. *Olney v. Progressive Casualty Insurance Company*, 2014 U.S. Dist.  
13 LEXIS 9146 (S.D. Cal.); 13-CV-2058-GPC-NLS (Defendant's motion to  
14 dismiss or in the alternative to strike the class allegations was denied  
15 finding that debt collection calls were not exempt from coverage under  
16 the TCPA);

17 i. *Iniguez v. The CBE Group, Inc.*, 2013 U.S. Dist. LEXIS 127066 (E.D.  
18 Cal.) 13-CV-00843-JAM-AC (The court denying Defendant's motion to  
19 dismiss and to strike class allegations holding that the TCPA applies to  
20 any call made to a cellular telephone with an ATDS).

21 j. *Catala v. Resurgent Capital Servs., L.P.*, 08-CV-2401 NLS, 2010 U.S.  
22 Dist. LEXIS 63501 (S.D. Cal.)(Co-lead counsel on a class settlement  
23 involving the Fair Debt Collection Practices Act);

24 k. *Hosseinzadeh v. M.R.S. Assocs.*, 387 F. Supp. 2d 1104 (C.D. Cal. 2005)  
25 (Summary judgment was granted *sua sponte* in favor of a debtor where  
26 debt collector violated the Fair Debt Collection Practices Act, when its  
27 employees failed to disclose the debt collector's identity and the nature of  
28 its business in the messages left on the debtor's answering machine). This

1 case has now been followed in at least four different districts throughout  
2 the country.

- 3 l. *Edstrom v. All Servs. & Processing*, 2005 U.S. Dist. LEXIS 2773 (N.D.  
4 Cal. 2005) (Numerous omissions from a letter sent by a debt collector to  
5 members of a homeowners association, and a statement requiring any  
6 dispute to be put in writing, violated 15 U.S.C. § 1692g(a) of the FDCPA  
7 and Cal. Civ. Code §1788.17. The FDCPA required strict compliance;  
8 actual confusion on debtors' part was not required);
- 9 m. *Forsberg v. Fid. Nat'l Credit Servs.*, 2004 U.S. Dist. LEXIS 7622 (S.D.  
10 Cal. 2004) (Plaintiff alleged sufficient facts to support his claim that a  
11 collection company, in its initial communication, did not comply with the  
12 statutory requirements for notice of validation of debts under the  
13 FDCPA);
- 14 n. *Sparrow v. Mazda Am. Credit*, 385 F. Supp. 2d 1063 (N.D. Cal. 2005)  
15 (Court struck Defendant's counter claim of the underlying debt in a fair  
16 debt action based on lack of subject matter jurisdiction);
- 17 o. *Geoffroy, et al. v. Washington Mutual Bank*, 484 F. Supp. 2d 1115 (S.D.  
18 Cal. 2007)(Court striking down Defendant's arbitration agreement as  
19 both procedurally and substantively unconscionable);
- 20 p. *Yang v. DTS Financial Group*, 07-CV-1731 JLS (WMc) (Holding that  
21 for profit debt settlement companies are covered under the FDCPA and  
22 can be construed as "debt collectors" under 15 U.S.C. § 1692a(6));
- 23 q. *Mason v. Creditanswers*, 2008 U.S. Dist. LEXIS 68575 (Holding that a  
24 forum selection clause causing a California consumer to litigate its claims  
25 seems contrary to the policies advanced by certain consumer protection  
26 statutes).
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- 1 r. *Myers v. LHR, Inc.*, 543 F.Supp.2d 1215 (2008) (Recognizing actual and  
2 statutory damages in the amount of \$92,000 in a default judgment based  
3 on violations of the State and Federal collection statutes);
- 4 s. *Yates v. Allied Intl Credit Corp.*, 578 F. Supp. 2d 1251 (2008) (Holding a  
5 debtors claim based on the FDCPA stemming from the filing of a false  
6 police report was not subject to the litigation privilege under Cal. Civ.  
7 Code § 47(b));
- 8 t. *Owings v. Hunt & Henriques, et al.*, 2010 U.S. Dist. LEXIS 91819 (S.D.  
9 Cal.); (Recognizing that the Service Members Civil Relief Act applies to  
10 California National Guard Members and that the debt collection  
11 attorney's false declaration the court violates the FDCPA);
- 12 u. *Heathman v. Portfolio Recovery Assocs., LLC*, 2013 U.S. Dist. LEXIS  
13 98742 (S.D. Cal. 2013) (Holding that failing to properly list and disclose  
14 the identify of the original creditor in a state collection pleading is a  
15 violation of the Fair Debt Collection Practices Act under 15 U.S.C. §  
16 1692e).

17 **ADDITIONAL RELEVANT TRAINING,**  
18 **SPEAKING/TEACHING ENGAGEMENTS AND ASSOCIATIONS**

19 17.I have undergone extensive training in the area of consumer law and the  
20 Telephone Consumer Protection Act. The following is a list of recent  
21 training conferences I attended:

- 22 a. National Consumer Law Conference; Oakland, CA – 2003;  
23 b. National Consumer Law Conference (FDCPA Mini-Conference);  
24 Kansas City, MO – 2004;  
25 c. National Consumer Law Conference; Boston, MA – 2004;  
26 d. Five-day extensive one-on-one training with The Barry Law Office;  
27 San Diego, CA –2005;  
28 e. Three-day FDCPA Mini-Conference; Minneapolis, MN – 2005;

- 1 f. Four-day extensive one-on-one training with The Barry Law Office;  
2 Minneapolis, MN – 2005;
- 3 g. Four-day National Association of Consumer Advocates Conference;  
4 Minneapolis, MN – 2005;
- 5 h. Four-day National Consumer Law Center Conference; Nashville, TN  
6 –2008;
- 7 i. Three-day National Consumer Law Center Conference; Portland, OR  
8 -2008;
- 9 j. Speaker at a Three-day National Consumer Law Center Conference;  
10 San Diego, CA - 2009;
- 11 k. Speaker ABA/JAG presentation to military service members and  
12 counsel; MCRD, San Diego CA – 2010;
- 13 l. Speaker ABA teleconference on defending consumer credit card debt  
14 and related issues; San Diego, CA – 2010;
- 15 m. Three-day National Consumer Law Center Conference; Seattle, WA -  
16 2011;
- 17 n. Two-day FDCPA Mini-Conference; New Orleans; LA – 2012;
- 18 o. Two-day National Consumer Law Center Conference on the FDCPA;  
19 Seattle, WA - 2012;
- 20 p. National Consumer Law Center Conference, National Convention;  
21 Baltimore, MD - 2013;
- 22 q. Speaker ABA National Conference, Business Litigation Section;  
23 Trends in Consumer Litigation; San Francisco, CA - 2013;
- 24 r. Speaker National Consumer Law Center; Nuts and Bolts of TCPA  
25 Litigation; San Antonio, TX - 2014;
- 26 s. Speaker San Diego County Bar Association; Convergence of the  
27 FDCPA and Consumer Bankruptcy; San Diego, CA – 2014;
- 28

- t. Guest Speaker at California Western School of Law; Consumer Law – 2014;
- u. Speaker at NCLC; Miami, FL – 2015;
- v. Speaker at NACA; San Antonio, TX – 2015; and,
- w. Speaker Three-day FDCPA Mini-Conference; Miami, FL – 2016.

18.I am a member in good standing of the following local and national associations:

- a. National Association of Consumer Advocates;
- b. Federal Bar Association;
- c. Consumer Attorneys of California;
- d. San Diego County Bar Association;
- e. Riverside County Bar Association;
- f. San Bernardino County Bar Association;
- g. Enright Inns of Court. (2011-2014);
- h. American Association for Justice.

19.I have been requested to, and have made, regular presentations to community organizations regarding debt collection laws. The following are a few examples of such presentations:

- a. California Western School of Law, 2005;
- b. Canyon Springs High School, Moreno Valley, CA 2003-2008; Careers in the legal field.
- c. Guest speaker on national talk radio. Topic: the passage of House Bill allowing the IRS to send past due consumer tax bills to private debt collection firms;
- d. Regular host on 103.7 Free FM on the radio show Know The Law. Topics addressing specific collection issues. Appearances number more than ten shows;

- 1 e. Department of Defense; JAG Office, Naval Station San Diego (2006);  
2 f. Department of Defense; JAG Office, Naval Station San Diego,  
3 relevant Fair Credit Reporting issues and the Fair Debt Collection  
4 Practices Act (2008);  
5 g. American Bar Association – Legal Assistance for Military Personnel,  
6 Naval Station –North Island (2008);  
7 h. National Consumer Law Center - E-Discovery issues - San Diego  
8 (2009);  
9 i. National Association of Retail Collection Attorneys - Prosecuting  
10 consumer cases - San Francisco (2009);  
11 j. American Bar Association - Seminar on defending consumer  
12 collection cases (2010);  
13 k. Military Law Committee (MCRD) - Representing military service  
14 members in consumer related issues - San Diego (2010);  
15 l. Speaker at a Three-day National Consumer Law Center Conference;  
16 San Diego, CA – 2009;  
17 m. Speaker at an ABA/JAG presentation to military service members and  
18 counsel; MCRD, San Diego – 2010;  
19 n. Speaker at an ABA teleconference on defending consumer credit card  
20 debt and related issues; San Diego, CA – 2010;  
21 o. Speaker ABA on Conducting and Managing Internal Investigations of  
22 Financial Institutions; National ABA Conference; San Francisco –  
23 2013.

24 I declare under penalty of perjury under the laws of California and the  
25 United States of America that the foregoing is true and correct, and that this  
26 declaration was executed on August 2, 2016.

27  
28 By: /s/ Joshua B. Swigart  
Joshua B. Swigart