

1 Michael W. Sobol (State Bar No. 194857)
2 Roger N. Heller (State Bar No. 215348)
3 Nicole D. Sugnet (State Bar No. 246255)
4 LIEFF CABRASER HEIMANN
5 & BERNSTEIN LLP
6 275 Battery Street, 29th Floor
7 San Francisco, CA 94111
8 Telephone: (415) 956-1000

9 Daniel M. Hattis (State Bar No. 232141)
10 Kirill M. Devyatov (State Bar No. 293106)
11 HATTIS LAW
12 2300 Geng Road, Suite 200
13 Palo Alto, CA 94303
14 Telephone: (650) 980-1990

15 John A. Yanchunis (admitted pro hac vice)
16 J. Andrew Meyer (admitted pro hac vice)
17 MORGAN & MORGAN
18 COMPLEX LITIGATION GROUP
19 201 North Franklin Street, 7th Floor
20 Tampa, FL 33602
21 Telephone: (813) 223-5505

22 *Class Counsel*

23 UNITED STATES DISTRICT COURT
24
25 NORTHERN DISTRICT OF CALIFORNIA

26 IN RE TRACFONE UNLIMITED
27 SERVICE PLAN LITIGATION

28 Lead Case No. 13-cv-03440-EMC

Consolidated Cases:
13-cv-05295-EMC
13-cv-05296-EMC
14-cv-01347-EMC

**DECLARATION OF DANIEL M. HATTIS
IN SUPPORT OF MOTION FOR AWARD
OF ATTORNEYS' FEES AND EXPENSES
AND FOR SERVICE AWARDS FOR
PLAINTIFFS**

Date: June 23, 2015
Time: 2:30 p.m.
Judge: Hon. Edward M. Chen

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I, Daniel M. Hattis, declare as follows:

- 1. I have personal knowledge of the facts set forth herein, and if called to testify thereto, I could and would do so competently.
- 2. I am a member in good standing of the California State Bar, and am the principal attorney at the Law Offices of Daniel M. Hattis d/b/a Hattis Law (“Hattis Law”). I am one of the attorneys representing Plaintiffs in the Hansell, Blaqmoor, and Ghandi cases, which were consolidated into the above-captioned matter. I submit this declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement and Motion for Award of Attorneys’ Fees and Expenses and for Service Awards for Plaintiffs.

Background And Experience

- 3. Hattis Law has been involved in all or virtually all aspects of the litigation and settlement of this matter. The primary Hattis Law attorneys who have worked on this matter are myself and associate attorney Kirill Devyatov.
- 4. I received my law degree from the University of California at Berkeley School of Law in 1999. From 2004 through 2011, I worked as an attorney at the Law Offices of Angelo Salvatore Parise, where I litigated dozens of cases, in addition to working on transactional and intellectual property matters.
- 5. In 2011, I was appointed co-class counsel, together with Lieff Cabraser Heimann & Bernstein LLP (“LCHB”), in a false discount advertising case of first impression, Brazil v. Dell Inc., No. C-07-01700 RMW (N.D. Cal.). After getting a class certified, we obtained a court-approved class settlement, pursuant to which Dell agreed to provide a \$50 cash payment to each class member who submitted a valid claim. In addition, Dell changed its methodology for consumer online advertising because of the case. I continue to work closely with LCHB on investigating and prosecuting complex consumer protection class actions.

1 6. In 2008, I founded Hattis Law, a class action law firm specializing in false
2 advertising cases. As principal of Hattis Law, I have performed a significant amount of class
3 action litigation work, including being involved in all aspects of the litigation and settlement of
4 this TracFone matter. I am also currently serving as plaintiff's counsel in the class case,
5 Williamson v. McAfee, Inc. (N.D. Cal.), Case No. 5:14-cv-00158-EJD.
6

7 7. In addition to my work as an attorney, I have considerable experience in the
8 technology and communication industries. In 1998, I co-founded Rentals.com, Inc., which built
9 and supplied software and Internet solutions for the rental housing industry. While there, I
10 managed and worked with software engineers to build and develop various computer
11 technologies. In 2001, I co-founded an investment bank, SG Capital, LLC, where I advised
12 technology companies, including communication company clients, regarding capital raising,
13 acquisitions and other transactional matters. In 2007, I co-founded Sesh.com, Inc., a Web-based
14 communications company that enables "co-browsing" of Web pages (*i.e.*, multiple users
15 browsing the same Web page at the same time). During my time at these companies, I developed
16 a strong familiarity with Internet and mobile technologies, knowledge that has been instrumental
17 in investigating, prosecuting, and bringing this matter to a successful resolution.
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19 8. Kirill Devyatov began working at Hattis Law in August 2014. Prior to that, Mr.
20 Devyatov worked for Kemnitzer, Barron & Krieg, LLP, a firm dedicated to consumer protection
21 class and individual actions. Mr. Devyatov started working at the Kemnitzer firm prior to
22 attending law school and worked there for more than 5 years, finishing his employment there as a
23 licensed attorney. While at the Kemnitzer firm, Mr. Devyatov was involved in all steps of class
24 action litigation including the initial client interview, filing complaints, drafting motions,
25 conducting discovery, and working on settlement agreements. Mr. Devyatov graduated from
26 University of San Francisco School of Law in May 2013, and received his law license in
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28

1 December 2013.

2 **Hattis Law's Work In This Action**

3 9. Hattis Law has served as co-counsel for Plaintiffs, and was involved in nearly all
4 aspects of the litigation and resolution of this action. Hattis Law dedicated a significant amount
5 of time and resources to investigating and litigating this matter to date.

6
7 10. Hattis Law was first informed about TracFone's deceptive advertising and
8 throttling practices by an upset former Straight Talk customer in May 2013. At that time Hattis
9 Law began an investigation of TracFone and its Straight Talk, Net10 and Simple Mobile brands;
10 we later expanded our investigation to the Telcel America brand. As part of this investigation, we
11 visited over a dozen retail stores including Walmart, Radio Shack, Target, Best Buy, 7-Eleven,
12 Safeway, Staples, and Walgreens to survey and review TracFone brands' "Unlimited" plan
13 advertising, packaging, and materials. We also reviewed and analyzed the online advertising and
14 purchase process for TracFone products on TracFone's websites and on the websites of leading
15 retailers. We purchased dozens of TracFone products including locked branded phones, SIM
16 cards, and plan cards to examine any disclosures and references to terms of service made by
17 TracFone in the packaging and during the account activation process. My staff and I activated
18 several accounts with TracFone to experience and test TracFone's throttling and suspension
19 practices firsthand. Hattis Law also analyzed the various TracFone brands' terms and conditions
20 and the arbitration clauses contained therein, and surveyed case law regarding the enforceability
21 of prohibitions of class actions contained in such arbitration clauses.
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23

24 11. I spoke with dozens of angry Straight Talk, Net10, Simple Mobile and Telcel
25 America customers to discuss their experience with TracFone's "Unlimited" plans. Seven of
26 these customers -- David Hansell, Edward Tooley, Christopher Valdez, Mona Gandhi, Marisha
27 Johnston, Marshall Tietje, and Martin Blaqmoor -- are Plaintiffs in the cases consolidated into the
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1 above-referenced matter.

2 12. Hattis Law partnered with LCHB in filing and prosecuting these cases, and I have
3 worked closely in particular with LCHB partners Michael Sobol, Roger Heller and Nicole Sugnet
4 on this case since June 2013. Hattis Law, and I personally, have been involved in all aspects of
5 the litigation of this case, including: Plaintiffs' pre-litigation investigation of the issues addressed
6 in this case; working with the named Plaintiffs; assisting LCHB in drafting complaints, motions,
7 pleadings, and settlement documents in these actions; reviewing thousands of documents
8 produced in discovery by Defendants; developing the damages model used in the case; attending
9 and assisting with depositions of Defendants; and taking the deposition of TracFone Associate
10 Vice President of Carrier Operations Ricardo Ramon.

11
12 13. Together with LCHB, I have closely participated in the resolution of these cases
13 with opposing counsel and the Federal Trade Commission, as well as in the extensive arms-length
14 settlement negotiations, including two full-day mediation sessions with Professor Eric Green of
15 Resolutions, LLC. After deals were reached with Defendants, Hattis Law, together with co-
16 counsel LCHB, devoted significant time and resources to finalize the documentation of the
17 settlement including the specifics regarding practice changes to be made by Defendants, and
18 forms of notice including claims forms, media notice, and claims protocols to ensure a robust
19 notice program and a user-friendly claims process.
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22 14. These negotiations resulted in a strong settlement and a robust class notice
23 program. Our litigation and settlement efforts yielded not only extensive monetary relief for the
24 Settlement Class, but also industry-leading practice changes by TracFone that will likely act as a
25 model for other mobile industry players in their future consumer advertising and sales practices.

26 **Hattis Law Staffing**

27 15. Hattis Law took every reasonable effort to avoid inefficiencies or duplication of
28

1 work.

2 16. I personally performed the bulk of Hattis Law’s work in this litigation. Other
3 Hattis Law attorneys who worked on the litigation include associate Kirill Devyatov, former
4 associate Amanda Pyper, and former associate Kaveh Mirshafiei. I was also assisted by five law
5 clerks.

6
7 17. My primary tasks in this litigation included factual investigation; formulating the
8 theory of the case; developing case strategy; assisting LCHB in the drafting of briefs; legal
9 research; communicating with clients; settlement negotiation; assisting LCHB in settlement
10 documentation; reviewing and drafting settlement notice documents, media notices and
11 advertising; reviewing discovery; and settlement implementation matters.

12
13 18. Mr. Devyatov’s primary tasks in this litigation included reviewing discovery and
14 legal research.

15 19. Ms. Pyper’s primary task in this litigation was legal research.

16 20. Mr. Mirshafiei’s primary task in this litigation was legal research.

17 21. Additional legal research was performed by law clerks Ana Amodaj and Scott
18 Crowell.

19 22. Hattis Law also relied on law clerks Nathan Helgason, Tiffany Lee, and Lauren
20 Wilbanks to assist in the investigation of Defendants including reviewing product purchase
21 processes and packaging, and researching past and present online and offline product advertising
22 of “unlimited” data plans.

23
24 **Hattis Law Time and Expenses**

25 23. Hattis Law has spent considerable time working on this litigation that could have
26 been spent on other matters. Throughout the litigation, the active prosecution of this case has
27 consumed a significant percentage of my billable time that could otherwise have been spent on
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1 other fee-generating work. In addition to a substantial percentage of my time, this litigation has
2 also required considerable work by other lawyers and staff members at Hattis Law that could
3 have otherwise been spent on other fee-generating work. Hattis Law has not been paid for any of
4 its time spent on this litigation, nor has it been reimbursed for any of its expenses incurred in this
5 litigation.
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7 24. In connection with this litigation, the attorney and staff timekeepers at Hattis Law
8 have billed a total of approximately 2,325.4 hours through April 20, 2015, for a total lodestar of
9 approximately \$921,251 during that period. This information is derived directly from Hattis
10 Law's time records, which are prepared contemporaneously and maintained by Hattis Law in the
11 ordinary course of business.
12

13 25. Attached hereto as **Exhibit A** is a summary listing each lawyer and staff member
14 for which Hattis Law is seeking compensation for legal services in connection with this action,
15 the hours each individual has expended to date, and the hourly rate at which compensation is
16 sought for each individual. For any individuals who have left the employ of Hattis Law, the
17 hourly rate at the time when their employment concluded is used.
18

19 26. Based upon my experience with other class actions, I believe that the time
20 expended by Hattis Law in connection with this litigation was necessary to ensure the success of
21 this action and was reasonable in amount, particularly given the strong monetary relief and other
22 relief obtained for the class and the complexity and challenges of this litigation.
23

24 27. Hattis Law's customary rates, which were used for purposes of calculating the
25 lodestar here, are consistent with prevailing rates in this District.
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27 28. Hattis Law requests reimbursement of \$2,878 in expenses that were necessarily
28 incurred in connection with the prosecution of this litigation, including expenses for: legal
research; investigative costs, including the purchase of products and phone service from

1 Defendants; copying and postage; and parking. Hattis Law will absorb the cost and not seek
2 reimbursement of \$11,360 in additional expenses incurred for travel, lodging, meals, and mileage.
3 A summary breakdown of the expenses Hattis Law requests reimbursement for in this matter is
4 attached hereto as **Exhibit B**.

5
6 29. The foregoing expenses were incurred solely in connection with this litigation and
7 are reflected on Hattis Law’s books and records as maintained in the ordinary course of business.
8 These books and records are prepared from invoices, receipts, and other records, and are an
9 accurate record of the expenses incurred in this case. Hattis Law did not mark-up any expenses,
10 and has included only the direct hard costs actually incurred and directly paid to vendors.

11 30. Based on my experience and my knowledge regarding the factual and legal issues
12 in this matter, it is my opinion that the settlement is fair, reasonable and adequate, and is in the
13 best interests of the respective class members.
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15
16 I declare under penalty of perjury that the foregoing is true and correct and that this
17 Declaration was signed in Palo Alto, California on April 20, 2015.
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19 /s/ Daniel M. Hattis
20 DANIEL M. HATTIS

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EXHIBIT A

HATTIS LAW LODESTAR - TRACFONE LITIGATION

Included Matters: Straight Talk, Simple Mobile, Net10, Telcel America

Report created: 4/20/2015

Time period: Inception to Present

	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
<u>Principal Attorney</u>			
Hattis, Daniel	1,392.4	\$500	\$696,210
<u>Associate Attorneys</u>			
Devyatov, Kirill	233.9	\$350	\$81,848
Mirshafiei, Kaveh	47.3	\$350	\$16,538
Pyper, Amanda	11.3	\$400	\$4,504
			<u>\$102,889</u>
<u>Law Clerks</u>			
Amodaj, Ana	414.6	\$200	\$82,920
Crowell, Scott	106.6	\$200	\$21,320
Helgason, Nathan	31.1	\$150	\$4,659
Lee, Tiffany	42.1	\$150	\$6,315
Wilbanks, Lauren	46.3	\$150	\$6,938
			<u>\$122,152</u>
MATTER TOTALS:	2,325.4		\$921,251

EXHIBIT B

HATTIS LAW COSTS - TRACFONE LITIGATION

Included Matters: Straight Talk, Simple Mobile, Net10, Telcel America

Report created: 4/20/2015

Time period: Inception to Present

HARD COSTS INCURRED AND SEEKING REIMBURSEMENT OF:

Research	\$2,005
Parking	\$703
Copying & Postage	\$170
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TOTAL:	\$2,878