

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MORGAN A. TAYLOR, on behalf of *
herself and all others similarly *
situated, *
Plaintiff, *

Case No. 1:17-cv-00599-AT

v. *

PROFESSIONAL PLACEMENT *
SERVICES, LLC and KOHL'S *
DEPARTMENT STORES, INC., *
Defendants. *

*

DECLARATION OF JUSTIN T. HOLCOMBE

Pursuant to 28 U.S.C. § 1746, JUSTIN T. HOLCOMBE hereby declares under penalty of perjury that the following statements are true and correct:

1. My name is JUSTIN T. HOLCOMBE, I am over the age of twenty-one (21), and I am competent in all respects to testify regarding the matters set forth herein.

2. I voluntarily give this DECLARATION in support of the Motion for Attorneys' Fees, Expenses, and Incentive Award in the case of *Morgan Taylor v. Prof'l Placement Svcs., LLC*, U.S. District Court, N.D. Ga., Civil Action File No. 1:17-CV-00599-AT.

3. I am one of the attorneys for the Plaintiff and the class in the above referenced case.
4. I attended college in Athens, Georgia at The University of Georgia and received a B.A. in Political Science with a minor in Anthropology in 2005. I became licensed to practice law in the State of Georgia after my graduation from the Georgia State University College of Law in 2009.
5. I am admitted to practice in all trial courts of the State of Georgia and the Georgia Supreme Court.
6. I am admitted to practice in the United States District Courts for the Northern, Middle and Southern Districts of Georgia and the Northern District of Florida.
7. I am admitted to practice in the United States Court of Appeals for the Eleventh Circuit.
8. My partner at Skaar & Feagle, LLP, Kris Skaar, is an attorney licensed to practice in the State of Georgia since his graduation from the University of Georgia School of Law in 1986.
9. Following a two year judicial clerkship, Kris Skaar entered private practice in 1988 and began a litigation practice.

10. Kris Skaar is admitted to practice in all trial and appellate courts of the State of Georgia.
11. Kris Skaar is admitted to practice in the United States District Courts for the Northern, Middle and Southern Districts of Georgia.
12. Kris Skaar is admitted to practice in the United States Court of Appeals for the Eleventh Circuit and in the Supreme Court of the United States.
13. My other partner at Skaar & Feagle, LLP, James M. Feagle, became licensed to practice law in the State of Georgia after his graduation from the Georgia State University College of Law in 1991.
14. James M. Feagle has been in the private practice of law since 1991, focusing primarily on consumer litigation in both state and federal court.
15. James M. Feagle is admitted to practice in all trial and appellate courts of the State of Georgia.
16. James M. Feagle is admitted to practice in the United States District Courts for the Northern, Middle and Southern Districts of Georgia, the Northern District of Florida, the Northern District of Illinois as well as the United States Court of Appeals for the Eleventh Circuit.
17. Skaar & Feagle, LLP's practice is almost exclusively in the area of consumer rights litigation.

18. Skaar & Feagle, LLP's practice includes litigation of consumer rights issues in federal and state courts, including primarily cases arising under the Telephone Consumer Protection Act, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act.
19. Skaar & Feagle, LLP's attorneys have successfully concluded thousands of consumer rights cases.
20. Skaar & Feagle, LLP attorneys are highly experienced in the area of class action litigation.
21. Skaar & Feagle, LLP attorneys Justin T. Holcombe, Kris Skaar, and James M. Feagle routinely litigate TCPA cases in this District, and have been appointed class counsel in several other TCPA class actions in this District. *See, e.g., Wreyford v. Citizens for Transportation Mobility, Inc.*, U.S. District Court, N.D. Ga., Civil Action File No. 1:12-cv-02524-JFK; *Luster v. Duncan Solutions, Inc.*, U.S. District Court, N.D. Ga., Civil Action File No. 1:14-cv-00112-AT; *Luster v. Wells Fargo Dealer Services, Inc.*, U.S. District Court, N.D. Ga., Civil Action File No. 1:15-cv-01270-RWS; *Cross v. Wells Fargo Bank, N.A.*, U.S. District Court, N.D. Ga., Civil Action File No. 1:15-cv-01058-TWT; *Markos v. Wells Fargo Bank, N.A.*, U.S. District Court, N.D. Ga., Civil Action File No. 1:15-cv-001156 -LMM; *Prather v.*

Wells Fargo Bank, N.A., U.S. District Court, N.D. Ga., Civil Action File No. 1:15-cv-04231-SCJ; *Barrow v. JPMorgan Chase Bank, N.A.*, 1:16-cv-03577-AT.

22. In addition, Skaar & Feagle, LLP attorneys have been appointed class counsel in several other consumer protection cases in this District. *See, e.g., Altman v. White House Black Market Inc.*, 1:15-cv-02451-SCJ-JKL, *dk.* entry 137 (N.D.Ga. Feb. 12 2018) *adopting* *dk.* entry 105 (N.D.Ga. Oct. 25, 2017) (certifying contested FACTA class over defendant's strenuous objections); *Freeman v. A.R.M. Solutions, Inc.*, U.S. District Court, N.D. Ga., Civil Action File No. 1:16-cv-00380-JFK (settled FDCPA class over improper collection notice); *Vinson v. FleetCor Tehcnologies, Inc., et al*, U.S. District Court, N.D. Ga., Civil Action File No. 1:14-cv-01939-ELR-LTW (settled FCRA class over improper notice and adverse action of employees relating to background searches); *Woodward v. Portfolio Recovery Associates, LLC*, U.S. District Court, N.D. Ga., Civil Action File No. 1:14-cv-00078-WEJ (settled FDCPA class over improper use of court forms); *Scruggs v. Crown Realty & Management Corporation et al*, U.S. District Court, N.D. Ga., Civil Action File No. 1:12-cv-00233-WSD (settled FDCPA class over alleged illegal collection fee); *Hill v. Asset Acceptance*,

LLC, U.S. District Court, N.D. Ga., Civil Action File No.1:12-cv-00891-AT (settled FDCPA class over envelope markings); *Davis et al. v. HSI Financial Services, LLC*, U.S. District Court, N.D. Ga., Civil Action File No. 1:09-CV-3700-RWS (settled FDCPA class over voice mail disclosures); *Karen Ray et al. v. Richard D. Clay, II, et al.*, U.S. District Court, N.D. Ga., Civil Action File No. 1:03-CV-1695-BBM (payday loan class settlement reached after referral to arbitration); and *Jennie R. Ehlermann et al. v. Cash Thru Payday, Inc.*, U.S. District Court, N.D. Ga., Civil Action File No. 1:00-CV-1822-MHS (payday loan class settlement reached after contested motion for class certification).

23. In addition to the cases noted in the preceding paragraphs, Skaar & Feagle, LLP attorneys have served as local and/or non-lead counsel in numerous other consumer class actions in this District and elsewhere.
24. I am active in TCPA policy discussions and have submitted comments on seven occasions since 2015 with respect to TCPA rulemaking and declaratory rulings with the Federal Communications Commission (“FCC”).
[https://www.fcc.gov/ecfs/search/filings?q=lawfirms.name:\(skaar\)&sort=date
_disseminated,DESC](https://www.fcc.gov/ecfs/search/filings?q=lawfirms.name:(skaar)&sort=date_disseminated,DESC)

25. Skaar & Feagle, LLP attorneys have taught continuing legal education on consumer rights topics, including but not limited to:

- < National Consumer Law Center, 2019 Fair Debt Collection Conference, *Automatic Telephone Dialing Systems: What are They, and What is the FCC Doing?* (Justin T. Holcombe);
- < National Association of Consumer Advocates, 2017 Webinar Series, *FDCPA Claims over Usurious Interest Charges* (Justin T. Holcombe);
- < National Consumer Law Center, 2017 Fair Debt Collection Conference, *FDCPA Claims over Usurious Interest Charges* (Justin T. Holcombe);
- < Legal Services University, *Practical Survey of the Fair Credit Reporting Act ("FCRA") for Legal Services Attorneys*, on September 13, 2016 (Justin T. Holcombe and James M. Feagle);
- < Georgia Trial Lawyers Association, Consumer Law Workshop, *Debt Collection Defense*, Atlanta, Georgia on November 11, 2009 (James M. Feagle and Kris Skaar);
- < Georgia Trial Lawyers Association, 2010 Annual Convention, *Debt Collection Defense and The Fair Debt Collection Practices Act*, Atlanta, Georgia on April 22, 2010 (James M. Feagle and Kris Skaar);

- < Georgia Trial Lawyers Association, 2010 Annual Convention, *Telephone Consumer Protection Act*, Atlanta, Georgia on April 22, 2010 (Justin T. Holcombe);
- < Supreme Court Committee on Civil Justice, Administrative Office of the Courts, *Providing First Line Legal Assistance to Seniors, Assisting Seniors with the FDCPA*, Macon, Georgia on June 10, 2010 (Kris Skaar and James M. Feagle) and Elijay, Georgia on June 25, 2010 (Kris Skaar);
- < Institute of Continuing Legal Education in Georgia, Successful Trial Practice, *Consumer Credit Protection Litigation*, Atlanta, Georgia on September 17, 2010 (Kris Skaar);
- < Atlanta Volunteer Lawyers, *Debt Collection Defense*, Atlanta, Georgia on March 3, 2010 (Kris Skaar);
- < Institute of Continuing Judicial Education in Georgia, 2010 Fall State Court Judge's Conference, *Overview of State Litigation Implications of the Federal Fair Debt Collection Practices Act*, Jekyll Island, Georgia on October 14, 2010 (Kris Skaar and James M. Feagle);

- < Institute of Continuing Legal Education in Georgia, Advanced Debt Collection, *Federal Fair Debt Collection Practices Act*, Atlanta, Georgia on February 24, 2011 (Kris Skaar);
 - < Metro Atlanta Consumer Bankruptcy Group (MACBAG), MACBAG Monthly Dinner Meeting, *FDCPA Presentation*, Atlanta, Georgia on May 17, 2012 (Kris Skaar);
 - < Atlanta Bar Association Elder Law Section, Monthly Breakfast Meeting, *FDCPA Presentation*, Atlanta, Georgia on September 19, 2012 (Kris Skaar);
 - < Cobb Bar Association Bankruptcy Section, Monthly Lunch Meeting, *FDCPA Presentation*, Marietta, Georgia on November 11, 2012 (Kris Skaar).
26. Skaar & Feagle, LLP attorneys are active members of the National Association of Consumer Advocates, make substantial efforts to remain current on the state of the Fair Debt Collection Practices Act, the Telephone Consumer Protection Act and the Fair Credit Reporting Act as well as related class action issues.
 27. Skaar & Feagle, LLP attorneys have attended the National Consumer Law Center's Consumer Rights Litigation Conferences, including in Tampa,

Florida in November of 2014 (Justin T. Holcombe, James M. Feagle, and Kris Skaar); San Antonio, Texas in November of 2015 (Justin T. Holcombe, James M. Feagle, and Kris Skaar); Anaheim, CA in October of 2016 (James M. Feagle), and Washington, D.C. in November 2017 (Kris Skaar). In addition, Skaar & Feagle, LLP attorneys attended the 2017 NCLC FDCPA conference in New Orleans (Justin T. Holcombe and James M. Feagle) and 2019 FDCPA conference in Las Vegas covering FDCPA and TCPA claims (Justin T. Holcombe and Cliff R. Dorsen).

28. Prior to filing this action, Skaar & Feagle, LLP attorneys thoroughly investigated the facts and circumstances surrounding this case.
29. After filing the action, Skaar & Feagle, LLP attorneys learned that Defendant used a Direct Drop voicemail service known as VoApps to deliver the messages in this case.
30. Skaar & Feagle, LLP attorneys served class discovery, litigated objections regarding discovery [Doc. 17]; and prepared discovery responses in coordination with the Plaintiff Morgan Taylor.
31. In addition, while this case was pending a company called All About the Message, LLC filed a petition with the FCC seeking a ruling that direct-drop, or ringless, voicemails were not covered by the TCPA's prohibition on

prerecorded calls to numbers assigned to a cellular service. [The petition is available at:

<https://ecfsapi.fcc.gov/file/104010829816078/Petition%20for%20Declaratory%20Ruling%20of%20All%20About%20the%20Message%20LLC.pdf>

32. Knowing the potential problems if the FCC were to sanction this technology and its potential impact on this case, I submitted substantive consumer opposition comments during the original comment period which combated the arguments pushed forward by All About the Message, LLC.

<https://ecfsapi.fcc.gov/file/1051819842910/FCC%20Comments.final.pdf>

33. In addition, I drafted and submitted Reply comments to the FCC to rebut arguments pressed by the Republican National Committee and others seeking to have the FCC approve of ringless voicemail technology.

<https://ecfsapi.fcc.gov/file/10602096349972/AATM%20Reply%20Comments.final.pdf>

34. Upon submitting the initial comments, I engaged in a social media and traditional media campaign to bring awareness to the petition, including posts on Facebook encouraging comments and a discussion with the New York Times over the dangers of this technology. *See*

<https://www.nytimes.com/2017/06/03/business/phone-ringless-voicemail-fcc-telemarketer.html>

35. The subsequent mass exposure of this campaign led to an unprecedented number of consumer express comments opposing All About the Message, LLC's petition numbering in the thousands.

https://www.fcc.gov/ecfs/search/filings?express_comment=1&proceedings_name=02-278&q=ringless&sort=date_disseminated,DESC

36. Shortly thereafter, All About the Message, LLC withdrew its petition with the FCC.

37. However, while All About the Message, LLC's petition was pending, Defendant submitted a Motion to Stay this case pending the outcome of that proceeding as well as the D.C. Circuit's decision in *ACA Int'l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018). I drafted and submitted brief opposing the stay explaining why the ringless voicemail at issue is no different in function than other forms of communication (e.g., voicemail and carrier gateways) that the FCC has already determined to be subject to the TCPA. *See Doc. 19.*

38. Against the backdrop of this litigation and satellite advocacy with the FCC, and after the parties had engaged in substantial written discovery and a new dispute as to discovery was ready to submit to the Court, The parties decided

they should explore the possibility of a mediated settlement, rather than continue with what was on the verge of becoming protracted and expensive litigation.

39. The parties engaged in extensive informal discovery about such items as class size, damages, and merits analysis.
40. On May 30, 2019, I appeared at a mediation before Judge Arlander Keys (Ret.) of JAMS in Chicago, Illinois.
41. The mediation lasted approximately 12 hours, from about 9 AM Central Time to almost 9 PM Central Time. At the conclusion, the parties reached a deal as to the amount of the settlement and the definition of the settlement class.
42. Negotiations between counsel continued with respect to the settlement agreement for several months until shortly before the motion for preliminary approval was filed.
43. Counsel for both Skaar & Feagle, LLP and Burke Law Offices, LLC worked cooperatively and shared the litigation load and divided tasks fairly and relatively equally amongst themselves.
44. Settlement negotiations were always at arm's length.

45. During the pendency of the litigation, we have expended significant effort to obtain and finalize the settlement with opposing counsel and gain approval from the court.
46. In my view, given all the risks of litigation that is undertaken solely on a contingent fee basis as well as the facts and circumstances of this case, the settlement entered between the parties on behalf of the class is fair, reasonable, adequate, and in the best interest of the Settlement Class and should be approved.
47. In my view, given all the risks of litigation and the facts and circumstances of this case, the total attorney fee request of one-third (1/3) from the Settlement Benefits is fair, reasonable, and adequate in light of similar cases in this District and Circuit and also in light of the overall recovery to each class member and should therefore be approved.
48. Our firm incurred \$1,194.61 in costs and reasonable litigation expenses which included the filing fee, service of process costs, and travel expenses. The reimbursement of these costs and reasonable litigation expenses from the Settlement Benefits is fair, reasonable, and adequate in light of similar cases in this District and Circuit and also in light of the overall recovery to each class member and should therefore be approved.

49. In my view, the requested incentive award of \$15,000.00 to Ms. Taylor is reasonable, particularly in light of the total benefit afforded the entire class action.

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

Executed on May 10, 2019.

/s/ Justin T. Holcombe
JUSTIN T. HOLCOMBE
DECLARANT