

1 Ethan Preston (263295)
2 PRESTON LAW OFFICES
3 4054 McKinney Avenue, Suite 310
4 Dallas, Texas 75204
(972) 564-8340 (telephone)
(866) 509-1197 (facsimile)
ep@eplaw.us

5 *Attorneys for Plaintiff Angelica Cosio*
6 *and the Certified Class*

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*

09/11/2020
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

8 **COUNTY OF SAN FRANCISCO**

9 ANGELICA COSIO, an individual, on her
10 own behalf and on behalf of all others
11 similarly situated,

12 Plaintiff,

13 v.

14 INTERNATIONAL PERFORMING
15 ARTS ACADEMY, LLC, a California
16 limited liability company, BARBIZON
17 SCHOOL OF SAN FRANCISCO, INC., a
18 California corporation, LION
MANAGEMENT GROUP INC., a
California corporation, ANTHONY
LOUIS LIONETTI, LARRY D.
LIONETTI, LENA QUESADA
LIONETTI, LENA M. LIONETTI, and
DOES 1-100, inclusive,
Defendants.

No. CGC-16-551337

**DECLARATION OF ETHAN PRESTON
SUPPORTING PLAINTIFF ANGELICA
COSIO'S MOTION FOR ATTORNEY'S
FEES, LITIGATION COSTS, AND
CLASS REPRESENTATIVE INCENTIVE
AWARD**

The Honorable Anne-Christine Massullo
Department 304
Civic Center Courthouse
400 McAllister Street
San Francisco California 94102

Date: October 19, 2020

Complaint Filed: April 6, 2016

DECLARATION OF ETHAN PRESTON

1 1. My name is Ethan Preston. I am an attorney at law licensed to practice before all
2 of the courts of the State of California. I am counsel of record for Plaintiff Angelica Cosio
3 (“Plaintiff”), and have personal knowledge of the facts set forth in this declaration and could
4 competently testify thereto if called to do so, except where noted otherwise.
5

Contingency Attorneys’ Fees

6 2. My billing rate is \$600 per hour. I have expended more than 1532.4 hours
7 litigating this case, but only advance 1532.4 hours for purposes of calculating my lodestar. At
8 \$600 per hour, 1532.4 hours equals \$919,440 in lodestar. I performed all of this work on a
9 contingency fee basis; I have not been paid for this work and no one has guaranteed that I will be
10 paid for this work. My work on this case made me unavailable to perform and bill other
11 renumeration and profitable work that I had to forgo. I also advanced all the costs identified
12 below without any guarantee of compensation.
13

Time Incurred

14 3. My billing records reflect a contemporaneous record of all the time I incur in my
15 legal work for clients. Nonetheless, the total above (1532.4 hours) reflects billing judgment and
16 deductions from time that was recorded, but which another person might consider unproductive,
17 duplicative, and/or excessive, including certain categories of time like tasks that were largely
18 administrative in nature, as well as preparing for litigation contingencies that did not realize (but
19 where reasonable prudence nevertheless still required such preparations).
20

21 4. Below, I provide a year-by-year summary of my billing records to substantiate the
22 scope and magnitude of the time and work invested in this case in more detail. My work on this
23 case began in 2014—six years ago. I ensured I retained co-counsel during this entire time.
24 However, for much of this time, I had the primary responsibility for actively litigating the case,
25 and at various points I was the sole attorney actively litigating for Plaintiff. Aiman-Smith &
26 Marcy, PC entered an appearance in this case in March 2017, after substantial litigation
27 (including finalizing the operative complaint) had taken place.
28

5. In 2014, I spent 20.3 hours on this case. This included factual and legal

1 investigation of the Defendants’ business practices, included researching the Krekorian Act,
2 interviewing one of my clients and other Showcase attendees about the Defendants’ business
3 practices, interviewing the Plaintiff. Once I learned that the Plaintiff had declared bankruptcy
4 after making payments to Defendants, I began researching how to exclude her claims against
5 Defendants from the bankruptcy estate so that she would have standing to bring those claims.

6 6. In 2015, I spent 44 hours on the case. This included continued research on the
7 appropriate exemptions and amended bankruptcy schedules, as well as actually preparing the
8 Plaintiff’s bankruptcy court filings, so that the bankruptcy trustee would abandon the claims
9 Cosio brought in this case as an asset of the bankruptcy estate. I also began to research
10 Defendants, including their assets.

11 7. In 2016, I spent 388.7 hours on this case. This included traveling to Woodland to
12 visit the Plaintiff and her family for an in-person interview and explanation of the class action
13 process, locating and identifying witnesses to Defendants’ internal business processes,
14 researching, drafting, and filing the complaint, preparing initial discovery, including a subpoena
15 on Defendants’ bank and moving to compel the subpoena, litigating Defendants’ initial demurrer
16 and motion to seal the complaint, several rounds of amending the complaint to address
17 Defendants’ factual and legal arguments, and meeting and conferring with Defendants on
18 discovery objections (including multiple drafts of the Court’s “one shot” discovery dispute
19 resolution method).

20 8. In 2017, I spent 514.6 hours on this case, subject to billing judgment deductions. I
21 litigated multiple discovery motions to extract class discovery from Defendants, reviewed,
22 assembled, and analyzed Defendants’ discovery productions for class certification and other
23 litigation purposes. I also finalized litigation over the sufficiency of the operative complaint,
24 continued to interview witnesses to Defendants’ internal business practices, and assisted with the
25 motion for court order prohibiting Defendants from contacting class members about the case. I
26 also completed several particularly time-consuming tasks in 2017. In particular, I researched and
27 prepared the initial draft of the Plaintiffs’ motion for class certification and supporting
28 documents. I also prepared Plaintiffs’ initial draft responses to Defendants’ discovery: in 2017,

1 Defendants ultimately served six Special Interrogatories, 25 Requests for Admission, five sets of
2 Form Interrogatories (including Form Interrogatory 17.1, which required a statement of all facts,
3 documents, and witnesses for every denial of the Request for Admissions), and 63 Demands for
4 Production of Documents, including a forensic inspection of Plaintiffs’ personal computer and
5 cellular telephone. I also defended the Cosios’ depositions, and analyzed the Cosio deposition
6 transcripts for the purposes of class certification.

7 9. In 2018, I spent 241.4 hours on this case, subject to billing judgment deductions. I
8 prepared for and attended the parties’ first mediation, continued a more detailed investigation of
9 Defendants’ assets, prepared the initial draft of the reply brief for class certification, and attended
10 and argued the motion for class certification. I also subpoenaed other witnesses to Defendants’
11 internal business practices, and prepared to enforce said subpoenas, and researched legal
12 framework for subpoenas to Defendants’ financial institutions.

13 10. In 2019, I spent 323.4 hours on this case, subject to billing judgment deductions. I
14 continued investigation of Defendants’ assets, served and litigated subpoenas to Defendants’
15 financial institutions and accountants, including Defendants’ motion to quash, and Plaintiffs’
16 motions to compel production of records from Defendants’ accountants. I researched litigation
17 options both prior to and after Defendants’ bankruptcy (Defendants had made their threat to file
18 bankruptcy a central negotiation feature in the settlement negotiation). I also prepared for and
19 attended two mediations, and drafted the settlement agreement.

20 11. The time from 2016 to 2019 above also incorporates time spent on compliance
21 with litigation’s routine procedural requirements like case management conferences, meet and
22 confer requirements, mechanics of document production, which is not otherwise stated in the
23 paragraphs above. Even in “relatively straightforward” cases,

24 the number of hours expended . . . may often seem high if considered in the
25 aggregate . . . Compliance with procedural requirements . . . can result in
26 attorneys’ fees for relatively simple cases that seem unreasonably high after a
 first—or even second or third—glance at the bottom line.

27 (*Ferland v. Conrad Credit Corp.* (9th Cir. 2001) 244 F.3d 1145, 1150-51.)

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Hourly Rate

12. I have been practicing law since I graduated from the Georgetown University Law Center in 2001, have been a member of the California bar since 2009, and have successfully litigated numerous complex consumer actions on behalf of plaintiffs. Since 2007, essentially all of my law practice has been devoted to litigating class actions on behalf of consumers.

13. My billing rate of \$600 per hour is reasonable. Since 2009, as the principal of Preston Law Offices, I have been appointed lead counsel or co-lead counsel for certified classes in *Wang v. Asset Acceptance, LLC* (N.D. Cal. Nov. 17, 2011, No. 09-4797), *DuFour v. Be, LLC* (N.D. Cal. May 20, 2013, No. 09-cv-03770-CRB), *Holmes v. NCO Financial Services, Inc.* (S.D. Cal. June 23, 2014, No. 10-2543), *Lofton v. Verizon Wireless (VAW) LLC* (N.D. Cal. Jan. 28, 2016, No. 13-05665), *Wang v. Bank of America, N.A.* (Sup. Ct. San Francisco, Aug. 8, 2014, No. CGC-12-526452), *Meyer v. PYOD, LLC* (Sup. Ct. San Diego, Jan. 6, 2017, No. 37-2014-00008110-CU-BT-NC), *In re Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation* (S.D. Cal., Jan. 25, 2017, No. 11-md-02295), *Addison v. Monarch & Associates, Inc.* (C.D. Cal. June 23, 2017, No. 14-358), and *Cosio v. International Performing Arts Academy, LLC* (Sup. Ct. San Francisco, Sept. 11, 2018, No. CGC-16-551337). A true and correct copy of my firm résumé is attached as Exhibit 1 to this Declaration.

14. In 2017, courts approved my prior billing rate of \$515. On January 17, 2017, *In re Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, the court approved a fee award based on a fee application using my \$515 per hour billing rate. (See Order Granting in Part Class Counsel’s Attorneys Fees, *In re Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, No. 11- md-02295 (S.D. Cal., Jan. 25, 2017), ECF No. 496 (“find[ing] counsel has skillfully advanced this action on the class’s behalf on a contingent-fee basis resulting in a settlement beneficially to the class”); Declaration of Ethan Preston, *In re Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, No. 11-md-02295 (S.D. Cal., Oct. 6, 2016), ECF Nos. 425-3.) More recently, the Superior Court of California, County of San Diego approved that billing rate on September 7, 2017 on a contested fee application. (Minute Order, *Meyer v. PYOD, LLC*, No. 37-2014-

1 00008110-CU-BT-NC (Sup. Ct. San Diego Sept. 7, 2017.)

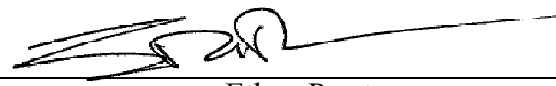
2 15. My billing rate is consistent with the billing rate for attorneys in the relevant legal
3 community who have practiced for 19 years: class action firms. Other cases have approved
4 similar billing rates for attorneys at class action firms, including \$600 per hour. (See *Moreno v.*
5 *San Francisco Bay Area Rapid Transit District* (N.D. Cal., Oct. 18, 2018, No. 17- 02911-JSC)
6 ECF No. 104-1 ¶19 [declaration of Todd Logan, identifying attorney of 13 years’ experience
7 billing at \$700 per hour]; *Moreno v. San Francisco Bay Area Rapid Transit District* (N.D. Cal.,
8 Jan. 28, 2019, No. 17-CV-02911-JSC) 2019 WL 343472, at *6 [“Class counsel has demonstrated
9 that their hourly rates [including] \$700 an hour for the managing partner . . . are reasonable in
10 light of prevailing market rates in the Bay Area”; quoting *In re LinkedIn User Privacy Litig.*
11 (N.D. Cal. 2015) 309 F.R.D. 573, 591 [“In the Bay Area, reasonable hourly rates for partners
12 range from \$560 to \$800, for associates from \$285 to \$510, and for paralegals and litigation
13 support staff from \$150 to \$240”]]; *In re Sony PS3 “Other OS” Litigation* (N.D. Cal., Dec. 1,
14 2016, No. 10-CV-01811-YGR) ECF No. 274, Attachment 1 [declaration of Kathleen V. Fisher,
15 identifying attorney with 19 years’ experience billing at \$650 per hour]; *In re Sony PS3 “Other*
16 *OS” Litigation* (N.D. Cal., Dec. 1, 2016, No. 10-CV-01811-YGR) ECF No. 273 ¶2 [declaration
17 of James J. Pizzirusso, attorney with over 15 years of experience]; *In re Sony PS3 “Other OS”*
18 *Litigation* (N.D. Cal., June 8, 2018, No. 10-CV-01811-YGR) 2018 WL 2763337, at *2 [“Court
19 has reviewed the declarations of class counsel [including] James Pizzirusso, and Kathleen Fisher
20 as to the work conducted and their hourly rates used to calculate the lodestar figure herein, and
21 finds they are all reasonable”].)

22 **Costs**

23 16. I have paid a total of \$32,584.25 for various expenses that were necessary for the
24 litigation of this case. These expenses include \$16,827.50 to various expert witnesses (including
25 accountants/certified fraud examiners, private investigators, and asset location services, and real
26 estate brokers for asset valuations); \$1,159.35 for process servers and witness compensation, and
27 for costs filing a motion to compel a subpoena issued in Florida state court; \$1,685.00 for an
28 electronic discovery vendor; \$4,462.40 to File&Serve for filing and service costs, including the

1 complex designation fee, and to court reporters; \$7,450.00 to JAMS as partial payment of the
2 mediators' fee; and \$1,000.00 to Aiman-Smith & Marcy as partial reimbursement of other case
3 expenses. I advanced all these expenses on a contingency fee basis; I have not been reimbursed
4 for these expenses and no one has guaranteed that I will be paid for these expenses (aside from
5 the settlement agreement with Defendants).

6 17. Pursuant to Code of Civil Procedure section 2015.5, I declare under penalty of
7 perjury under the laws of California that the foregoing is true and correct.

8
9 Dated: September 8, 2020 By: 
10 _____
11 Ethan Preston
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

PRESTON/LAW OFFICES

4054 McKinney Avenue, Suite 310 / Dallas, Texas 75204
(972) 564-8340 / (866) 509-1197 / ep@eplaw.us

(September 2020)

FIRM RÉSUMÉ

Ethan Preston has represented consumers in class actions since 2007, focusing on consumer privacy and unfair trade practices that relate to consumer technology. Mr. Preston has taken substantial leadership roles in many class actions: he was appointed lead counsel or co-lead counsel for certified classes in *Wang v. Asset Acceptance, LLC*, No. 09-4797 (N.D. Cal. Nov. 17, 2011), *DuFour v. Be, LLC*, No. 09-03770 (N.D. Cal. May 20, 2013), *Holmes v. NCO Financial Services, Inc.*, No. 10-2543 (S.D. Cal. June 23, 2014), *Wang v. Bank of America, N.A.*, No. CGC-12-526452 (Sup. Ct. San Francisco Aug. 8, 2014), *Lofton v. Verizon Wireless (VAW) LLC*, No. 13-05665 (N.D. Cal. Jan. 28, 2016), *Meyer v. PYOD, LLC*, No. 37-2014-00008110-CU-BT-NC (Sup. Ct. San Diego Jan. 6, 2017), *In re Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, No. 11-md-02295 (S.D. Cal., Jan. 25, 2017), *Addison v. Monarch & Associates, Inc.*, No. 14-358 (C.D. Cal. June 23, 2017), and *Cosio v. International Performing Arts Academy, LLC*, No. CGC-16-551337 (Sup. Ct. San Francisco Sept. 11, 2018).

Representative rulings obtained by Preston Law Offices include *Kuns v. Ocwen Loan Servicing, LLC*, 611 F. App'x 398 (9th Cir. 2015) (reversing dismissal, creditor violated Cal. Civ. Code § 1785.25(a) by reporting deficiency on residential mortgage foreclosure to credit reporting agency without disclosing that deficiency could not be collected legally); *Holmes v. NCO Financial Services, Inc.*, 538 F. App'x 765 (9th Cir. 2013) (reversing summary judgment because defendant had constructive notice to information about plaintiff's dispute of consumer debt in electronic debt service system); *Meyer v. Portfolio Recovery Associates, LLC*, 707 F.3d 1036 (9th Cir. 2012) (affirming preliminary injunction and class certification under Rule 23(b)(2)); *Katz v. Liberty Power Corp., LLC*, No. 18-10506, 2020 WL 3492469 (D. Mass. June 26, 2020) (granting motion to compel, denying motion to quash subpoenas for email headers); *Katz v. Liberty Power Corp., LLC*, No. 18-10506, 2020 WL 3440886 (D. Mass. June 23, 2020) (denying motion to stay based on then-pending Supreme Court decision); *Katz v. Liberty Power Corp., LLC*, No. 18-10506, 2019 WL 6051442 (D. Mass. Nov. 15, 2019) (denying motion to stay and certificate of interlocutory appeal); *Katz v. Liberty Power Corp., LLC*, No. 18-10506, 2019 WL 4645524 (D. Mass. Sept. 24, 2019) (denying motion to dismiss and for summary judgment in TCPA case based on First Amendment and standing arguments); *Katz v. Liberty Power Corp., LLC*, No. 18-10506, 2019 WL 957129 (D. Mass. Feb. 27, 2019) (motion for protective order prohibiting defendants from obtaining plaintiff's email via subpoena); *Katz v. Liberty Power Corp., LLC*, No. 18-10506, 2018 WL 4398256 (D. Mass. Sept. 14, 2018) (ordering defendants to "now implement the preservation measures discussed in *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004) with respect to relevant documents in the possession of their vendors"); *In re Portfolio Recovery*

Associates LLC Telephone Consumer Protection Act Litigation, No. 11-md-02295, 2017 WL 3575615 (S.D. Cal. Jan. 25, 2017) (enjoining litigation against class counsel arising from counsel's representation of class in any other court under All Writs Act, 28 U.S.C. § 1651); *Addison v. Monarch & Associates, Inc.*, No. 14-358, 2016 WL 11530424 (C.D. Cal. Nov. 10, 2016) (compelling third party to produce computer for forensic examination); *Addison v. Monarch & Associates, Inc.*, No. 14-358, 2017 WL 10562596 (C.D. Cal. May 8, 2017), *adopted* 2017 WL 10651455, (C.D. Cal. June 23, 2017) (class certification where defendant spoliated records identifying class members); *In re Collecto, Inc., Telephone Consumer Protection Act Litigation*, No. 14-02513, 2016 WL 552459 (D. Mass. Feb. 10, 2016) (denying motion for summary judgment on Telephone Consumer Protection Act); *Lofton v. Verizon Wireless (VAW) LLC*, 308 F.R.D. 276 (N.D. Cal. 2015) (granting motions to compel and sanction defendants); *Wang v. Asset Acceptance LLC*, No. 09-04797, 2010 WL 2985503 (N.D. Cal. July 27, 2010) (denying motion to dismiss Fair Credit Reporting Act claim against furnisher); *DuFour v. Be., LLC*, No. 09-3770, 2009 WL 4730897 (N.D. Cal. Dec. 7, 2009) (granting constructive trust as preliminary injunction); *Lofton v. Bank of Am. Corp.*, No. 07-05892, 2008 WL 2037606 (N.D. Cal. May 12, 2008) (granting discovery motions); and *In re Netflix Antitrust Litigation*, 506 F. Supp. 2d 308 (N.D. Cal. 2007) (ruling consumers have standing to bring *Walker Process* antitrust claims, ordering limited discovery on other elements of antitrust claims).

Mr. Preston received his Bachelor of Arts degree from the Plan II program at the University of Texas at Austin, and his *juris doctor* degree from the Georgetown University Law Center in 2001. Mr. Preston is admitted to practice in California and Texas, and is also admitted to practice before the United States District Court in, e.g., the Northern and Eastern Districts of Texas, all District Courts in California, as well as the United States Courts of Appeals for the Seventh and Ninth Circuits.

Mr. Preston has authored the following law review articles: *Cross-Border Collaboration by Class Counsel in the U.S. and Ontario*, 4 Canadian Class Action Rev. 164 (2007), *The Global Rise of a Duty to Disclose Information Security Breaches*, 22 J. Marshall J. Computer & Info. L. 457 (2004) (with Paul Turner), *Computer Security Publications: Information Economics, Shifting Liability and the First Amendment*, 24 Whittier L. Rev. 71 (2002) (with John Lofton), and *The USA PATRIOT Act: New Adventures in American Extraterritoriality*, 10 J. Fin. Crime 104 (2002).