

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

JOHN J. DIEI, JR. and REBECCA L. CLEVELAND,
husband and wife, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

SALAL CREDIT UNION,

Defendant.

NO. 19-2-10266-7 KNT

**DECLARATION OF ARI Y. BROWN IN
SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND AWARD OF
ATTORNEYS' FEES, COSTS, AND SERVICE
AWARDS**

I, Ari Y. Brown, here declare as follows:

A. Background and experience.

1. I am Of Counsel at the law firm of Terrell Marshall Law Group PLLC (Terrell Marshall), counsel of record for plaintiffs in this matter. I am admitted to practice before this Court and am a member in good standing of the bar of the state of Washington. I respectfully submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Award of Attorneys' Fees, Costs, and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. Terrell Marshall is a law firm in Seattle, Washington, that focuses on complex civil and commercial litigation with an emphasis on consumer protection, product defect, civil

1 rights, and wage and hour cases. Terrell Marshall has been appointed lead or co-lead counsel
2 representing multi-state and nationwide classes in state and federal court in Washington and
3 throughout the United States. Since its founding in 2008, the attorneys at Terrell Marshall
4 have represented scores of classes, tried class actions in state and federal court, and obtained
5 hundreds of millions of dollars in monetary relief to workers, consumers, and other
6 individuals.

7 3. I am among the lead attorneys supervising the prosecution of this case. I
8 received a B.A., from Grinnell College in 1991 and a J.D from Seattle University School of Law,
9 magna cum laude in 1999. I was admitted to the Washington bar in 1999 and have been a
10 member in good standing without interruption since that time. Prior to joining Terrell
11 Marshall, I was a partner at the law firm of Hagens Berman Sobol Shapiro in Seattle,
12 Washington. For most of my career, I have concentrated my practice in complex litigation and
13 on the prosecution of consumer class actions. I have served in leadership positions in a
14 number of Multi District Litigation class actions and litigated numerous cases involving retail
15 banking practices including cases that have centered around the imposition of bank fees on
16 customers. I was one of the original attorneys to bring a class action against Wells Fargo Bank
17 and other nationwide banks for charging improper overdraft fees on debit card transactions
18 and was an MDL “co-team leader” and class counsel for Plaintiffs in the multi-district class
19 action that centered on this practice in the actions styled as *In Re: Checking Account Overdraft*
20 *Litigation*, Case No. 1:09-md-02036-JLK.

21 **B. Qualifications of other Terrell Marshall attorneys.**

22 4. Toby J. Marshall is a founding member of Terrell Marshall who represents
23 clients in a wide variety of class actions and other complex litigation, including wage and hour,
24 product defect, civil rights, and consumer protection cases. Mr. Marshall has served as co-lead
25 counsel in numerous class and collective actions and has tried and won individual and class
26 cases in state and federal court. He has also argued several times before the Washington

1 Supreme Court, the Washington Court of Appeals, and the Ninth Circuit Court of Appeals. In
2 2002, Mr. Marshall received his J.D. from the University of Washington School of Law, where
3 he served on the Moot Court Honor Board and was selected to the Order of Barristers. Before
4 forming Terrell Marshall, Mr. Marshall was a member of Tousley Brain Stephens PLLC. He
5 regularly speaks at seminars on employment and class action issues. Mr. Marshall is a
6 member of the Washington Employment Lawyers Association and serves on WELA's amicus
7 and legislative committees. He also serves on the ACLU of Washington's legal committee. Mr.
8 Marshall has been named several times to the Washington Super Lawyers list.

9 5. Maria Hoisington-Bingham has been an associate with Terrell Marshall since
10 2016. Ms. Hoisington-Bingham concentrates her practice on complex litigation, including
11 consumer and wage and hour class actions. In 2016, she received her J.D. from the University
12 of Washington School of Law, where she was the chief managing editor for the Washington
13 International Law Journal. During law school, Ms. Hoisington-Bingham served as an extern to
14 the Honorable John C. Coughenour, Senior United States District Judge for the Western
15 District of Washington, the Equal Employment Opportunity Commission, and Columbia Legal
16 Services. Before law school, Ms. Hoisington-Bingham was a Fulbright scholar in El Salvador,
17 where she researched issues of recidivism and barriers to reentry in the juvenile justice
18 system.

19 **C. Other cases litigated by Terrell Marshall.**

20 6. Examples of consumer protection class actions that Terrell Marshall is litigating
21 or has litigated to successful completion include:

- 22 a. *Gold, et al. v. Lumber Liquidators, Inc.*—Filed in 2014 on behalf
23 of a nationwide class of consumers who purchased defective
24 flooring. The Northern District of California granted
25 preliminary approval of the settlement, valued at up to \$30
26 million, on December 18, 2019.

- 1 b. *Van Fleet v. Trion Worlds, Inc.*—Filed in 2015 on behalf of a
2 nationwide class of online video game players deprived of a
3 promised discount on purchases of virtual goods and who
4 participated in an alleged illegal lottery. The San Mateo
5 County Superior Court granted preliminary approval of a
6 \$420,000 settlement on December 13, 2019.
- 7 c. *Wornicki v. BrokerPriceOpinion.com*—Filed in 2013 on behalf
8 of a nationwide class of people who provided home
9 valuations, known as broker price opinions, but who were not
10 paid for the opinions as promised. The District of Colorado
11 granted final approval of a settlement of more than \$1.5
12 million on September 20, 2018. Terrell Marshall is pursuing
13 enforcement of the settlement.
- 14 d. *Jordan v. Nationstar Mortgage, LLC*—Filed in 2012 on behalf
15 of Washington homeowners who were improperly locked out
16 of their homes by their mortgage lender. The Eastern District
17 of Washington granted final approval of a \$17 million
18 settlement on May 2, 2019.
- 19 e. *Lohr v. Nissan*— Filed in 2016 on behalf of Washington
20 consumers who purchased or leased certain Nissan vehicles
21 with a factory-installed panoramic sunroof that is allegedly
22 defective. The case is currently pending in the Western District
23 of Washington.
- 24 f. *Harvey v. Centene Mgmt. Co. LLC, et al.*—Filed in 2018 on
25 behalf of consumers who allege insurance companies failed to
26 provide both an adequate network of health care providers
 and an accurate listing of such providers for their health
 insurance plans. The case is currently pending in the Eastern
 District of Washington.

7. Additional information about class actions litigated by Terrell Marshall is
available on our website www.terrellmarshall.com.

1 **C. The prosecution of this action.**

2 8. Plaintiffs filed their original complaint on April 15, 2019 and filed an amended
3 complaint on May 14, 2019.

4 9. On June 14, 2019, Plaintiffs propounded discovery consisting of requests for
5 production, interrogatories, requests for admission, and special interrogatories. Salal
6 responded to Plaintiffs' discovery requests on July 12, 2019 with significant information and
7 class-wide transaction data.

8 10. Beginning July 15, 2019, the parties met and conferred several times regarding
9 discovery issues and the production of documents and information. The parties began
10 discussing potential early resolution of this matter and later agreed to participate in a
11 mediation with Louis D. Peterson of Hillis Clark Martin & Peterson.

12 11. Class Counsel retained Arthur Olsen as an expert. Mr. Olsen has extensive
13 experience dealing with computerized banking systems. Working with Mr. Olsen, Class
14 Counsel analyzed Salal's transactional data systems to determine the data fields that would
15 allow for an analysis of its transactional data for the purpose of identifying which overdraft
16 and NSF fees were caused by various types of transactions, and which transactions and
17 ensuing fees resulted from the practices Plaintiffs challenged in this action.

18 12. In preparation for the mediation, Salal provided Plaintiffs with data for all
19 transactions regarding accounts on which Salal had levied overdraft or NSF fees between April
20 1, 2015 and April 30, 2019. Mr. Olsen analyzed transaction records from over 6,600 accounts
21 and identified each transaction that triggered an overdraft or NSF fee at a time when the
22 ledger balance was sufficient to cover the underlying transaction or would have been
23 sufficient but for a prior wrongful fee and calculated the total amount of allegedly wrongful
24 overdraft and NSF fees Salal charged its members.

25 13. On November 18, 2019, the parties mediated with Mr. Peterson in Seattle,
26 Washington. The parties reached an agreement after midnight following a full day of

1 mediation and signed a CR-2A Agreement. Salal then provided updated transaction data, that
2 allowed Class Counsel's expert to identify all Class Members and their respective claimed
3 damages and allowed Class Counsel to advocate for the Class while finalizing the Settlement
4 Agreement. The parties finalized the Settlement Agreement on December 30, 2019.

5 14. Mr. Olsen has calculated that the total At-Issue Fees are \$482,038. Assuming
6 that the Court approves Service Awards of \$1,250 for each Plaintiff, an award of attorneys'
7 fees and costs of 25% of the Settlement Fund to Class Counsel, and if there are no requests for
8 exclusion by Proposed Class Members, the Settlement Class Members will receive 101% of
9 their alleged calculated damages. The Settlement Awards will range from approximately
10 \$29.29 to \$8,581.97, with an average payment of \$177.75.

11 15. The parties agreed to hire JND Legal Administration to serve as the Class
12 Administrator. JND sent the Court-approved notices on April 13, 2020. The deadline for opting
13 out or objecting to the Settlement is June 12, 2020. JND has provided the parties' counsel with
14 weekly updates on the status of the notice program. The status report JND provided on May
15 26, 2020 is attached hereto as Exhibit A. As of May 26, 2020, JND has sent the Court-approved
16 notice by mail to 611 Class Members and by email to 2,352 Class Members who were still Salal
17 members and who agreed to receive notices from Salal by email. JND remailed notice by mail
18 to 94 Class Members whose email notices were returned undeliverable and 46 Class Members
19 whose mailed notices were returned undeliverable after obtaining alternate mailing
20 addresses. JND has reported that as of May 22, 2020, 2,664 Class Members, or 99.14% of the
21 Class, have received notice by mail or email or both. JND also set up a toll-free number for
22 Class Members to call with questions and a settlement website that includes documents and
23 information relating to the Settlement, including the Settlement Agreement, Plaintiffs' motion
24 for preliminary approval, and the Court's order granting preliminary approval. Plaintiffs'
25 motion for final approval and for attorneys' fees, costs, and service awards will also be posted
26 on the website. The settlement website has been viewed by 243 unique visitors and the

1 telephone assistance program has received 45 incoming calls.

2 16. As of May 26, 2020, no Class Members have objected to or excluded
3 themselves from the settlement.

4 17. Plaintiffs recognize the risks and costs associated with continued litigation. If
5 this litigation continued, the parties would need to exchange additional discovery and take
6 depositions. Plaintiffs would need to move for class certification and each party would likely
7 move for summary judgment. Salal has denied liability and maintained that its practices are
8 not deceptive or unfair because Salal discloses that it uses a member's available balance for
9 purposes of assessing overdraft fees in several documents it provides to members. Although
10 Plaintiffs believe that Salal's disclosures were inadequate, that the account tracking tools Salal
11 provides to its members obscure the available balance and prominently feature the ledger
12 balance, and that the mere disclosure of a practice does not mean it is not unfair or deceptive
13 under the CPA, this factual issue would present a challenge. Further, because the parties
14 disagree on whether a Class Member's damages includes overdraft and NSF fees that would
15 not have been imposed but for a previous wrongful overdraft or NSF fee, Plaintiffs face the
16 risk that the Class would be awarded a fraction of the damages Plaintiffs have calculated, even
17 upon prevailing at trial. Even if Plaintiffs were to defeat summary judgment and prevail at
18 trial, they would likely face an appeal by Salal.

19 18. Plaintiffs John Diel and Rebecca Cleveland assisted counsel with the
20 investigation and ongoing litigation and were available by telephone during a full day of
21 mediation. Plaintiffs' efforts and willingness to pursue this action contributed to the
22 resolution, including recovery of 101% of each Class Members' alleged damages.

23 19. Since the beginning of this case, Terrell Marshall has worked with no guarantee
24 of being compensated for its time and efforts. Payment of Terrell Marshall's fees has always
25 been contingent on successfully obtaining relief for the Plaintiffs and Class Members. As a
26 result, there was a substantial risk of non-payment, particularly in light of the challenges

1 inherent in this type of case. Work on this case has necessarily been to the exclusion of work
 2 on other matters that likely would have generated fees. Terrell Marshall has also been denied
 3 use of the fees it earned over the course of this case.

4 20. The work performed by paralegals and legal assistants was work that I or
 5 attorney would have had to perform absent such assistance. The work of Jennifer Boschen,
 6 Bradford Kinsey, Holly Rota, and Jessica Langsted required an understanding of relevant legal
 7 rules and concepts. In the case of Jordan Martin and Rachel Laux, the work required an
 8 understanding of the facts and claims at issue in the case and was important to the
 9 development of those facts and claims. All of these staff members are qualified to perform
 10 substantive legal work based on their training and past experience working for attorneys.

11 21. The following table identifies the attorneys and staff members from Terrell
 12 Marshall who worked on this case and for whom the recovery of fees is sought. For each of
 13 the timekeepers below I have stated the current hourly rate, the number of hours worked
 14 through May 22, 2020, and the total amount of fees. These time summaries are taken from
 15 contemporaneous, daily time reports prepared and maintained by Terrell Marshall in the
 16 regular course of business.

NAME AND POSITION	DESCRIPTION OF WORK PERFORMED	RATE	HOURS BILLED	TOTAL
ATTORNEYS				
Toby J. Marshall Founding Member J.D. from Univ. of Washington School of Law, 2002	Analyzed issues regarding case strategy; worked on complaint; worked on case management issues; worked on factual background development; analyzed issues regarding factual background; participated in meetings with co-counsel and opposing counsel regarding factual background; attended meeting with potential expert; worked on amended complaint; analyzed issues regarding briefing schedule and	\$525	31.50	\$16,537.50

1		scheduling of defendant's motion to dismiss; analyzed issues regarding ESI protocol; reviewed answer to complaint and analyzed issues regarding same;			
2		worked on case management issues;			
3		worked on mediation memorandum;			
4		traveled to, participated in, and returned from mediation; worked on settlement materials; analyzed issues regarding deadline for final approval motion.			
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8	Ari Brown	Analyzed issues regarding case strategy; reviewed case file; worked on complaint; attended meeting with opposing counsel; worked on amended complaint; worked on and reviewed discovery requests and responses; attended meeting with counsel and expert regarding mediation; worked on mediation memorandum; prepared for and attended mediation; worked on settlement agreement; worked on notice documents; worked on motion for preliminary approval; reviewed report from settlement administrator.	\$500	175.00	\$87,500.00
9	Of Counsel				
10	J.D. from Seattle Univ. School of Law, 1999				
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12					
13					
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16	Maria Hoisington-Bingham	Analyzed issues regarding factual and procedural background; reviewed case file; worked on written discovery requests to defendant; participated in conference with expert; reviewed discovery responses; worked on mediation memorandum; worked on settlement agreement; worked on class notice; worked on motion for preliminary approval; worked on settlement bids; worked on settlement administration; worked on settlement website; worked on settlement notice; worked on motion for final approval.	\$275-\$300	118.20	\$32,612.50
17	Associate				
18	J.D. from Univ. of Washington School, 2016				
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PARALEGALS/LEGAL ASSISTANTS					
25	Jennifer J. Boschen	Worked on processing client documents; worked on ESI protocol;	\$175	6.70	\$1,172.50
26					

DECLARATION OF ARI Y. BROWN IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS – 9
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Senior Paralegal 19 years legal experience	worked on exhibits to mediation submission.			
Bradford K. Kinsey Legal Assistant at Terrell Marshall Law Group PLLC 29 years legal experience	Worked on pleadings and exhibits; communicated with court clerk; arranged filing and service of pleadings; worked on settlement agreement and exhibits.	\$125	3.60	\$450.00
Holly Rota Legal Assistant at Terrell Marshall Law Group PLLC 15 years legal experience	Worked on discovery requests and responses; worked on notices of appearances; worked on mediation memorandum and exhibits; worked on notice of settlement; communicated with court clerk; worked on motion for preliminary approval and supporting declarations;	\$125	8.80	\$1,100.00
Jordan K. Martin Legal Assistant at Terrell Marshall Law Group PLLC	Worked on calling project.	\$75	.70	\$52.50
Jessica A. Langsted Legal Assistant at Terrell Marshall Law Group PLLC since 2017	Worked on docketing.	\$125	2.90	\$382.50
Rachel Laux Legal Assistant at Terrell Marshall Law Group PLLC since 2019	Worked on ad campaign.	\$125	.50	\$62.50
TOTAL:			347.90	\$263,200.50

DECLARATION OF ARI Y. BROWN IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS – 10
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TERRELL MARSHALL LAW GROUP PLLC
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Seattle, Washington 98103-8869
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

22. The lodestar calculations of Terrell Marshall are based on reasonable hourly rates. Terrell Marshall set its rates for attorneys and staff members based on a variety of factors, including among others: the experience, skill and sophistication required for the types of legal services typically performed; the rates customarily charged in the markets where legal services are typically performed; and the experience, reputation and ability of the attorneys and staff members.

23. Terrell Marshall has incurred out-of-pocket litigation expenses totaling \$15,996.02, primarily to cover mediation costs, expert costs, and expenses related to legal research, investigation, filing fees, and administrative costs such as copying, mailing, and messenger expenses. The following chart summarizes Terrell Marshall’s litigation costs:

Category of Expense	Total
Computer Research (Westlaw, PACER)	37.68
Courier/Process Service/Postage	152.45
Filing fees	264.98
Mediation	6,012.50
Expert	9,450.00
Parking	78.41
Reproductions (Scanning, printing, and copying)	0.00
Total	\$15,996.02

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, on this 29th day of May, 2020.

By: /s/ Ari Y. Brown, WSBA #29570
Ari Y. Brown, WSBA #29570

- Exhibit A -

SCU Overdraft Settlement Status Report (as of May 26, 2020)

COMPILATION OF CLASS LIST	
Total Records Received from Defendants:	2,698
Unique Records (after de-duping)	2,687

MAILED NOTICE (on April 13, 2020)	
Total Notices Mailed:	705
<ul style="list-style-type: none"> • Initial Notices Mailed: 	611
<ul style="list-style-type: none"> • Notices Mailed to Undeliverable Email Records: 	94
Total Undeliverable Notices:	62
<ul style="list-style-type: none"> • Undeliverable Notices with Forwarding Address Information: 	1
<ul style="list-style-type: none"> • Undeliverable Notices Re-mailed after Research: 	46
<ul style="list-style-type: none"> ○ Re-mailed Notices Returned as Undeliverable: 	8

EMAILED NOTICE (on April 8, 2020)	
Total Notice Emails Sent:	2,352
Total Undeliverable Emails:	98

REQUESTS FOR EXCLUSION/OPT-OUTS (Deadline: June 12, 2020)	
Opt-Out Requests Received:	0

OBJECTIONS (Deadline: June 12, 2020)	
Timely Objections:	0

TELEPHONE ASSISTANCE PROGRAM (1-888-670-1152)	
Total Incoming Calls:	45

SETTLEMENT WEBSITE (www.scuoverdraftsettlement.com)	
Total Unique Visitors:	243
Total Page Views:	644