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Attorneys for Plaintiffs and the Proposed Class

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 JUAN ROMERO, FRANK
16 TISCARENO, and KENNETH
17 ELLIOTT, on behalf of themselves, and
18 all others similarly situated,

Plaintiffs,

v.

20 SECURUS TECHNOLOGIES, INC,

21 Defendant.

Case No.: 16-cv-1283-JM-MDD

CLASS ACTION

**DECLARATION OF ROBERT
TEEL IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: June 5, 2020

Time: 8:30 a.m.

Ctrm: 5D

Judge: Hon. Jeffrey T. Miller

1 Pursuant to 28 U.S.C. § 1746, I, Robert Teel, hereby declare and state as
2 follows:

3 1. I am a member in good standing of the State Bar of California, and the
4 United States District Court for the Southern District of California. I, along with my
5 co-counsel, represent Plaintiffs Juan Romero, Frank Tiscareno, and Kenneth Elliott
6 (“Plaintiffs”) and serve as class counsel pursuant to the Court’s Order granting in
7 part Plaintiffs’ motion for class certification in the above-captioned matter.
8 D.E. 141.¹ I make this declaration in support of Plaintiffs’ Motion for Preliminary
9 Approval of Class Action Settlement (the “Motion”). This declaration is based on
10 my own personal knowledge, and if called to testify, I could and would do so
11 competently on the matters stated herein.

12 **BACKGROUND**

13 2. I have served as counsel for the Plaintiffs in this Action since May 2016
14 when the case was initially filed. I had a primary role in the prefiling investigation
15 of this matter, and have been actively and personally involved in prosecuting and
16 resolving the litigation.

17 3. Prosecution of this litigation necessarily required the commitment of a
18 substantial amount of time, labor, and effort from myself and my co-counsel at the
19 Law Offices of Ronald A. Marron, APLC and Foley & Lardner LLP. Class Counsel
20 are experienced in complex litigation and class actions of similar size, scope, and
21 complexity to this class action and have the resources necessary to see this litigation
22 through to its conclusion. *See* D.E. 62-45, 62-49, 122-28, 122-8, 122-13, and 141.

23 4. The Parties have engaged in extensive law and motion and discovery
24 proceedings, including without limitation: (a) three motions to dismiss the Action,
25 a motion to strike class allegations, three amended complaints, and a third party
26 motion to intervene; (b) the exchange of multiple sets of written interrogatories and

27 _____
28 ¹ Capitalized terms shall have the same meaning as set forth in the Settlement Agreement attached
as Exhibit 1, hereto, unless otherwise noted.

1 requests for admission, the production of thousands of documents, the issuance of a
2 number of third-party subpoenas, several motions to resolve discovery disputes that
3 arose over the course of the litigation, including (i) Plaintiffs’ request to expedite
4 discovery, (ii) Plaintiffs’ motion to compel additional responses to certain
5 interrogatories, requests for production, and requests for admission, (iii) Defendant’s
6 motion for relief from the discovery order of Magistrate Judge Mitchell D. Dembin,
7 (iv) Plaintiffs’ *ex parte* application regarding Defendant’s interrogatory responses
8 and the existence and/or production of audio recordings, and (v) the Parties’ joint
9 motion to resolve whether Defendant must respond to outstanding discovery while
10 its motion to stay proceedings was pending; and (3) Plaintiffs’ two motions for class
11 certification and a motion for partial summary judgment.

12 5. Plaintiffs first moved for class certification on October 10, 2017. On
13 April 12, 2018, the Court denied Plaintiffs’ motion for class certification without
14 prejudice. D.E. 62. The Court allowed Plaintiffs to renew their motion within 90
15 days which it did on July 11, 2018. D.E. 122. Plaintiffs thereafter moved for partial
16 summary judgment, asking the Court to hold that Cal. Pen. Code § 636 requires no
17 proof of intent to trigger civil liability. D.E. 101. On November 21, 2018, the Court
18 issued an order resolving both motions. D.E. 141.

19 6. First, the Court denied Plaintiffs’ motion for partial summary judgment,
20 concluding that Section 636 does not create a strict liability offense. Second, the
21 Court granted in part Plaintiffs’ renewed motion for class certification. The Court
22 certified a Rule 23(b)(2) and Rule 23(b)(3) class for Plaintiffs’ Section 636 claim,
23 and denied class certification for each of Plaintiffs’ other claims.

24 7. On December 3, 2018, Plaintiffs filed an interlocutory request to appeal
25 the denial of their motion for partial summary judgment. The Ninth Circuit denied
26 the request on January 16, 2019. Both Plaintiffs and Defendant petitioned the Ninth
27 Circuit for review of the Court’s class certification order pursuant to Federal Rule of
28

1 Civil Procedure 23(f). On February 27, 2019, the Ninth Circuit denied Plaintiffs’
2 Rule 23(f) petition, but granted Securus’s petition.

3 **MEDIATION EFFORTS**

4 8. Settlement negotiations in this action initially commenced soon after a
5 status hearing with the Court on August 6, 2018 in parallel with continuing active
6 litigation, including the discovery and law and motion proceedings described above.
7 The Parties participated in two all day mediation sessions with the Hon. Leo S. Papas
8 (Retired), first on October 3, 2018 and again on August 16, 2019. While the
9 mediations did not result in an immediate settlement, the Parties made significant
10 progress and continued to engage in direct settlement negotiations following the
11 conclusion of the second mediation.

12 9. Ninth Circuit Mediator Sasha M. Cummings was appointed as a
13 mediator following the Ninth Circuit’s grant of review for Securus’s Rule 23(f)
14 petition. Ms. Cummings encouraged the parties to continue negotiating during
15 periodic status calls and an agreement was eventually reached, the terms of which
16 are memorialized in the Settlement Agreement dated April 17, 2020, a true and
17 correct copy of which is attached hereto as Exhibit 1. At all times, the settlement
18 negotiations were adversarial, non-collusive, and conducted at arms-length.

19 10. I was the attorney primarily responsible for engaging in the
20 extraordinarily extensive, arm’s-length settlement negotiations with Defendant’s
21 counsel in an effort to resolve the Class’ claims. Throughout the early settlement
22 process, Plaintiffs pushed Defendant hard on two fronts: first, to provide cash
23 compensation to the Class Members; and second, to change their business practices
24 to eliminate virtually all risk of an inadvertent recording of attorney-detainee phone
25 calls, thereby protecting not only the state and federal privacy and other
26 Constitutional rights of the Class, but also of the public.

27 11. The Court’s rejection of Plaintiffs’ theory of strict liability on partial
28 summary judgment (and the Ninth Circuit’s denial of Plaintiffs’ petition for

1 interlocutory review) on November 21, 2018 meant that to recover any damages at
2 trial, Plaintiffs and other Class Members would need to go beyond strict liability and
3 prove some level of *scienter* creating a genuine risk that absent settlement,
4 Defendant could prevail in motion practice, at trial, or on appeal, resulting in no
5 relief to Plaintiffs or the Class.

6 12. Further, with the Ninth Circuit's order granting Defendant's Rule 23(f)
7 petition for review of the order granting class certification (and the Ninth Circuit's
8 denial of Plaintiffs' petition for interlocutory review of that order as well), Plaintiffs
9 faced the distinct possibility that the Ninth Circuit could reverse this Court's order
10 granting class certification.

11 **REACHING A SETTLEMENT**

12 13. With Securus' appeal pending, Plaintiffs faced the imminent risk that
13 the Ninth Circuit could reverse class certification or that they would face evidentiary
14 hurdles in establishing that the recordings were made with any requisite amount of
15 *scienter*. In light of the serious risks Plaintiffs faced in obtaining relief for the Class,
16 and with the assistance of the two mediators, Judge Papas and Ms. Cummings, and
17 only after engaging in exhaustive and extensive arm's-length settlement negotiations
18 with Defendant's counsel, the Parties were able to negotiate and execute the Class
19 Action Settlement Agreement attached hereto as Exhibit 1.

20 14. During the nearly 19 months the Parties were engaged co-extensively
21 in settlement discussions and hard-fought litigation, the Parties communicated
22 regularly with the mediators and each other, alone and in various combinations, in
23 briefings, telephonic meetings, and formal negotiation sessions involving hundreds
24 of man hours of time by the Parties, their counsel, and the mediators.

25 15. The terms and conditions of the Settlement: (1) do not require any
26 Class Member other than the named Plaintiffs to release any of their claims; (2)
27 provide for a change in Defendant's business practices that eliminates virtually all
28 risk of an inadvertent recording of attorney-detainee phone calls, thereby protecting

1 not only the state and federal Constitutional rights of the Class, but also of the public;
2 (3) provide that Class Members and other customers of Defendant will receive notice
3 of the litigation, which has heretofore not been provided, and an opportunity to
4 object; and (4) require ongoing reporting and monitoring of the business practices
5 of Defendant to ensure its compliance with the terms and conditions of the
6 Settlement Agreement for a period of five years. Without the Settlement, Defendant
7 would have no incentive to change or monitor its business practices to ensure
8 compliance with the best practices available at the highest level regarding its
9 recording practices. Protecting the state and federal Constitutional and statutory
10 privacy rights of attorneys and detainees has always been the engine driving this
11 litigation. The benefits from the Settlement combine to promote justice and preserve
12 and protect not only the Class Members' statutory and Constitutional rights, but
13 those of the public as well.

14 **THE ADMINSTRATOR AND CLASS REPRESENTATIVES**

15 16. Class Counsel has years of experience working with numerous notice
16 and settlement administration vendors. After reviewing the Settlement
17 Administrator requested (and being paid for) by Defendant, the Parties agreed on the
18 ILYM Group, Inc. to serve as the Settlement Administrator.

19 17. Based on the significant experience of Class Counsel in complex class
20 action litigation, and my personal observations during the course of this case, it is
21 my professional opinion that each of the three proposed Class Representatives
22 willingly, constructively, and effectively contributed to the prosecution of the
23 claims on behalf of the Class.

24 18. Each Class Representative has regularly communicated with me and
25 other Class Counsel to stay abreast of the developments in this litigation, and has
26 stayed informed and been familiar with all developments in the case. They have
27 read the applicable pleadings, understand them, and have vigorously prosecuted the
28 litigation. Each of them searched for documents and information in hard copy and

1 throughout their online accounts, and provided those documents to Class Counsel
2 in response to Defendants' written discovery requests. Counsel ultimately
3 produced approximately 3,300 documents.

4 19. Further, each Class Representative participated in the mediations,
5 either telephonically or in person, for up to eight hours each day. Each was
6 consulted on the terms of the Settlement Agreement before it was signed, approved
7 its terms, and support its approval by the Court. They have expressed their continued
8 willingness to protect the Class until the Settlement is approved and implemented.

9 20. Each Class Representative spent dozens of hours of their time to
10 contribute to the prosecution of this case on behalf of the Class. In order to secure
11 the Settlement, and in contrast to the Class Members, each Class Representative has
12 agreed to a general release of his claims for monetary damages. In light of their
13 commitment of time, effort, and dedication, as well as in recognition of the release
14 of their claims for monetary damages, I believe it is appropriate under applicable
15 Ninth Circuit and Southern District case law that each of them receive a service
16 award in the amount of \$20,000, to be paid by Defendant if approved by the Court.
17 No Class Representative has been promised the receipt of any service award.

18 21. I and my co-counsel have undertaken an extensive amount of work
19 involving thousands of hours of professional time and effort in this litigation, and
20 have demonstrated our devotion of the resources necessary to pursue this litigation
21 to its ultimate outcome. We have pledged to continue this work and effort through
22 the settlement approval and administration process and the ongoing compliance
23 reporting and monitoring process.

24 22. I have conferred with counsel for Defendant, who do not oppose
25 Plaintiffs' Motion.

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

27 DATED: May 18, 2020

/s/ Robert Teel

28 Robert Teel, *An Attorney for Plaintiffs and the Class*