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Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

17 Plaintiffs,

18 v.

19 SECURUS TECHNOLOGIES, INC,

20 Defendant.

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

CLASS ACTION

DECLARATION OF FRANK
TISCARENO IN SUPPORT OF
PLAINTIFFS' MOTION FOR
LITIGATION COSTS,
INCENTIVE AWARDS, AND
ATTORNEYS' FEES

Date: September 28, 2020

Time: 10:00 a.m.

Ctrm: 5D

Judge: Hon. Jeffrey T. Miller

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

3 1. I, along with plaintiffs Juan Romero and Kenneth Elliott (collectively
4 myself and Messrs. Romero and Elliott are referred to herein as “Plaintiffs”), serve
5 as class representatives pursuant to the Court’s Order granting in part Plaintiffs’
6 motion for class certification (D.E. 141) in the above-captioned matter. I make this
7 declaration in support of Plaintiffs’ Motion for Litigation Costs, Incentive Awards,
8 and Attorneys’ Fees. This declaration is based on my own personal knowledge,
9 and if called to testify, I could and would do so competently on the matters stated
10 herein.

11 2. As set forth in my October 6, 2017 declaration in support of Plaintiffs’
12 motion for class certification (D.E. 62-43), since July of 2016 I have been involved
13 in, and stayed informed about, the case, and actively participated in it through
14 continuing telephone conferences and correspondence with Class Counsel;
15 reviewing pleadings, documents, and material filings and orders entered by the
16 Court; attempting to locate and provide documents and responding to
17 interrogatories and discovery requests; providing input regarding litigation and
18 settlement strategy; being on telephonic standby for two full-day mediations;
19 discussing the parameters for an appropriate resolution of the case; and ultimately
20 reviewing, approving, and agreeing to the terms and conditions of the settlement
21 agreement.

22 3. I have read Mr. Teel’s declaration filed concurrently herewith and agree
23 with his time entries reflecting approximately 6.8 hours of telephone conferences
24 between us and 2.0 hours exchanging correspondence in the course of this litigation.
25 In addition, I estimate I spent at least four hours attempting to locate and provide
26 documents in order to try to respond to Defendant’s discovery requests. I was also
27 on telephonic standby for two full day mediation sessions on October 3, 2018 and
28 August 16, 2019.

1 4. In addition to the foregoing time directly spent on prosecuting this case,
2 I have been exposed to and suffered harm directly resulting from the financial and
3 reputational risks associated with serving as a representative for the Class. When I
4 completed my detention in 2015, I actively searched for my name on the internet in
5 order to take steps to try and maintain as much privacy as possible in connection
6 with any public records relating to my detention.

7 5. In response to searches I conducted on myself using the Google search
8 engine, I found that no information about my detention turned up on the publicly
9 available internet in 2015 through the middle of 2016. As a result of my
10 investigation I learned that, at least until July 2016, any such records were typically
11 sequestered behind a “payment wall”, meaning a fee had to be paid to a for-profit
12 service in order to locate them on the publicly available internet. Unfortunately,
13 that all changed in late 2016 and early 2017.

14 6. Since I completed my detention, I have been involved in the sales,
15 marketing, and finance areas of the solar energy industry. In addition, I have been
16 producing a talk radio show with comedic satire that discusses trending topics,
17 celebrity issues, and the current status of our country. My wife is a real estate agent
18 in Riverside County where we work and live.

19 7. In early 2018, I had completed negotiations with a liquor store called
20 Don John Market in National City, California and signed a contract for the sale and
21 installation of \$215,000 worth of solar panels and equipment. Shortly after the
22 contract was signed, but before the solar panels and equipment were delivered and
23 installed, I received a phone call from a representative from the liquor store asking
24 whether I was the same Frank Tiscareno that was involved in this action. I informed
25 him I was, and shortly thereafter they cancelled the contract and I lost a \$215,000
26 sale.

27 8. As part of my business practices I have my secretary keep a business
28 record call the Project Tracking Sheet which is attached hereto as Exhibit 1. The

1 sheet reflects the entry made by my secretary for the Don John Market, “Just
2 canceled [sic] due to Frank’s Background search on Google.”

3 9. Immediately after getting the Don John Market cancellation phone call,
4 I performed a Google search on myself and found publicly available records on the
5 internet regarding this action which referred to me by name under search results
6 with titles such as “Prison Phone Calls Illegally Recorded”. *See* Exhibit 2, hereto,
7 for examples of what turned up in my Google search results.¹

8 10. Similarly, in the middle of 2018 I completed negotiations with the
9 Willowbrook Golf Course in Lakeside, California and signed a contract for the sale
10 and installation of \$520,000 worth of solar panels and equipment. Again, shortly
11 after the contract was signed, but before the solar panels and equipment were
12 delivered and installed, I received a phone call from a representative for the golf
13 course inquiring whether I was the same Frank Tiscareno that was involved in this
14 action. I also informed him I was.

15 11. As a result, the golf course cancelled their contract and I lost a half
16 million-dollar sale. The attached Project Tracking sheet reflects the entry “Do not
17 call – No long [sic] want to due [sic] business with Frank or Legends”. Since then,
18 virtually every time there is a material development in the case or the Court issues
19 an order, it is reported somewhere online along with my name.

20 12. In addition to the cancelled golf course contract, later in 2018 one of
21 the networks that carried my radio show asked me about my involvement in this
22 action and immediately thereafter cancelled my broadcast rights. My wife has also
23 been queried by the Department of Real Estate regarding my detention, and I
24 believe this resulted from the publishing of my name linked to the public reporting
25

26 ¹ Exhibit 2 hereto is from a Google search conducted on August 13, 2020 setting
27 forth examples of the kinds of publicly available reports which I turned up on the
28 internet in 2018. Since discovering this situation I have been by and large successful
in de-prioritizing my name in these types of Google search engine results.

1 about this case on the internet. Both my wife and I have lost social media contacts
2 and friends and other potential business opportunities, many, if not all, of which I
3 attribute to the public reporting of my name linked to this lawsuit.

4 13. As a result of the fact that a Google search of my name reveals a link
5 to this case any time there is a new public report on the internet, I continue to
6 monitor the internet bi-weekly, and particularly any time there is filing with the
7 Court. When I see a public report regarding developments in this case with my
8 name linked to it, I take affirmative steps to try and remove my name from the
9 Google search engine or cache, or otherwise minimize the risk that my name will
10 appear linked to the case so that it requires a more detailed search. I will do the
11 same after this motion is filed because the reputational harm from these internet
12 reports is ongoing to this day.

13 14. As the Court can see, one of the most recent entries in Exhibit 2 is dated
14 June 5, 2020 and sets forth the Plaintiffs' memorandum of points and authorities in
15 support of our motion for preliminary approval of this settlement. Prior to my
16 mitigation efforts, a Google search of my name would turn up the types of search
17 results set forth on Exhibit 2 at or near the top of a search of my name alone.

18 15. I estimate that the financial and reputational harm resulting from the
19 unwanted disclosure of my involvement in this case directly resulting from serving
20 as a class representative equals or exceeds \$100,000. Margins in the solar industry
21 are high and the gross profit on the cancelled liquor store and golf course contract
22 alone would easily exceed this amount.

23 16. I have read Mr. Elliott's declaration filed concurrently herewith and,
24 like him, I made the decision to become involved in this action because I believe
25 the recording of attorney-client communications, in addition to being illegal, is just
26 plain wrong, and I wanted to address this problem in order to serve the best interests
27 of the Class and the public as a whole. I too believe I have fulfilled this obligation.
28

1 17. Also, like Mr. Elliott, I authorized my attorneys to settle this action after
2 considering the substantial benefits to the Class when weighed against the
3 significant risks and uncertainties of continued litigation. I discussed those issues
4 with Class counsel, and I believe the settlement represents a highly favorable
5 outcome and is clearly in the best interest of the Class and the public at large.

6 18. I feel certain the settlement would not have been achieved without the
7 diligent efforts of the attorneys who aggressively and successfully litigated this case
8 for years. I believe the settlement is ultimately fair, reasonable, and adequate, and
9 should be approved by the Court. While I recognize that any determination of costs,
10 incentive awards, and attorneys' fees is ultimately left to the Court, I approve the
11 requested amount for recovery of the costs, awards, and fees for litigating this case
12 up to a total of \$900,000.

13 19. I estimate that approximately two dozen hours of my time has been
14 consumed as a result of this case (including the telephonic standby time for the two
15 mediations). In order to settle this case, I was required to provide a general release
16 all claims against the Defendant, including not only for statutory damages under the
17 California Invasion of Privacy Act ("CIPA"), but also a general release of all other
18 claims against the Defendant. While I and the other Plaintiffs agreed to give the
19 required general releases, I would not have approved and entered into the settlement
20 on behalf of the 142,314 other similarly situated individuals involved in this case if
21 their releases had also been required.

22 20. Based on the financial and reputational harm my wife and I have
23 suffered, and especially the cancelled contracts with Don John Market and the
24 Willowbrook Golf Course, as well as the time and effort continually required to
25 mitigate the risks associated with the public reporting of developments in the case
26 linked to my name, I value the general release of my claims over and above the
27 statutory \$5,000 per phone call CIPA damages to be in excess of \$100,000.


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1 21. Accordingly, based on the amount of time directly spent on prosecuting
2 this litigation, on mitigating the financial and reputational risks associated with this
3 case, and on the value of the general release which the Class is not required to give,
4 I respectfully request reimbursement in the amount of \$20,000 as an incentive
5 award for serving as the Class representative in the prosecution of this case.

6 22. I did not become involved in this action to obtain any special benefit,
7 nor has any such benefit ever been promised to me. I have not received, been
8 promised nor offered, nor will I accept, any form of compensation, directly or
9 indirectly, for prosecuting or for serving as a party and class representative in this
10 action except for such fees, costs, or other payments as the Court expressly approves
11 to be paid or reimbursed to me or on my behalf.

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

13
14 DATED: August 13, 2020

 8-13-20
Frank Tiscareno

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