

EXHIBIT C

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GREGORY FRANKLIN,
INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiff,

v.

OCWEN LOAN SERVICING, LLC,

Defendant

Case No.: 3:18-CV-03333-SI

DECLARATION OF RICHARD DUBOIS
RE: POTENTIAL CY PRES
DISTRIBUTION

Judge: Hon. Susan Illston

1 I, Richard Dubois, declare as follows:

2 1. I have personal knowledge of the facts in this Declaration and, if called as a
3 witness, I could and would competently testify to these facts.

4 2. I am Executive Director of the National Consumer Law Center (“NCLC”). As
5 Executive Director of NCLC, I am responsible for priority setting, project assignments, and
6 quality of work at the organization, and direct all research, policy, and advocacy projects, as
7 well as Center policymaking, hiring, fundraising, and budgetary planning. I have been with
8 NCLC since 1997, having previously served as Deputy Director, as Director of Development
9 and Project Planning, and as an attorney focusing on foreclosure prevention and sustainable
10 homeownership issues. I have also been a co-author or contributing author of a number of
11 NCLC publications, including NCLC’s treatise *Consumer Warranty Law*.

12 3. NCLC is a 501(c)(3) nonprofit organization dedicated to consumer protection
13 and the promotion of fairness and justice in the marketplace. NCLC was founded in 1969 with
14 funding from the federal Office of Economic Opportunity as a national support center for legal
15 services organizations. Today, NCLC is a fully independent organization governed by a
16 volunteer national board of directors, including attorneys and clients from low-income
17 communities, which continues to prioritize providing training, support and case assistance to
18 legal aid and pro bono attorneys representing low-income clients.

19 4. NCLC has been the recipient of numerous cy pres awards from both Federal and
20 State courts in California, including: *Salazar v. 1st Pacific Credit Union*, Sacramento Superior
21 Court (case no. 06AS01213), *Corsino v. North Island Credit Union*, San Diego Superior Court
22 (case no. 37-2007-00073934-CU-MC-CTL), *Santos v. Meriwest Credit Union*, Alameda
23 Superior Court (case no. RG09480463) and *Boschma v Home Loan Center*, Superior Court
24 Orange County (case no. 30-2009 00277721).

25 5. Since 2016, NCLC has trained over 125 California legal aid and private
26 consumer attorneys at our major conferences - the Consumer Rights Litigation Conference (see
27 para 7 below), the Fair Debt Conference and at the Mortgage Conference. Concomitantly,

1 NCLC has recently worked closely with California based organizations involved with utility
2 issues, e.g. holding trainings or direct case work with TURN, Greenlining (on energy and racial
3 justice issues, and the Center for Accessible Technology on issues such as:

4 1) Lowering energy disconnections for non-payment through stronger consumer
5 protection rules and the establishment of an Arrearage Management Program for the
6 large investor owned electric and gas companies and the establishment of a
7 Percentage of Income Pilot program and collecting monthly data on arrearages and
8 disconnections to monitor trends;

9 (2) Getting strong COVID relief protections for energy, water and telecom customers
10 in California;

11 (3) We are active participants in a water affordability docket that is trying to secure
12 similar protections that we've secured on the energy side;

13 (4) We have intervened in a proceeding regarding clean energy financing programs
14 and this proceeding is about to start soon. We will be advocating for programs and
15 policies that protect low-income connections to utility service and avoid dangerous
16 unaffordable debt for these families. Some of the legal services, law school clinics
17 active in our CA PACE work have also intervened in this docket and we will be
18 collaborating with those organizations to protect low-income Californians,
19 particularly the elderly and non-English speaking households that tend to be the
20 targets of predatory actors.

21 As part of our work on the California Initiative, NCLC also offered consultations to
22 practitioners representing low-income California clients on consumer issues along with
23 technical assistance provided in the form of NCLC's expert testimony, and by NCLC co-
24 counseling or referring cases to other California consumer lawyers. NCLC also provided
25 consumer law training for legal services programs, private lawyers, pro bono programs, and
26 government agencies in state. NCLC runs a listserv for California-based legal services
27 attorneys and other nonprofit advocates to share information and collaborate on legal issues
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1 facing low-income consumers. NCLC engages in legislative advocacy on behalf of low income
2 clients and responds to requests for information within our expertise from the media and
3 policymakers. NCLC developed educational brochures, analyses, and other special reports on
4 issues important to California consumers. NCLC has undertaken special projects targeting
5 specific abuses and issues or special populations, including absent class members, designed to
6 bring greater fairness and justice to the consumer marketplace. NCLC's work continues in
7 California and will do so for many years to come.

8 6. For more than five decades, NCLC has been a leading source of legal and public
9 policy expertise on consumer issues for lawyers, federal and state policymakers, consumer
10 advocates, journalists, and front-line providers of community services. With a goal of
11 protecting consumers from, and redressing injuries caused by inaccurate, false and misleading
12 statements or omissions by businesses, NCLC has trained and advised tens of thousands of
13 advocates on consumer legal issues, appeared in cases throughout the nation, worked with state
14 and federal commissions and legislatures, written investigative reports, and published leading
15 legal practice manuals and consumer guides. Specific examples of the ways in which NCLC's
16 consumer law expertise is used to support consumer attorneys and directly benefit consumers
17 include the following:

18 7. **Conferences and Trainings:** Every year, NCLC trains thousands of attorneys
19 and other advocates through workshops, conference presentations, and webinars. These in-
20 depth trainings benefit consumers nationally by ensuring that practitioners and advocates
21 understand the current state of consumer law and accurately apply existing legal frameworks.
22 NCLC hosts three annual conferences, including the nation's largest annual consumer law
23 conference, the [Consumer Rights Litigation Conference \(CRLC\)](#). Sessions are led by the
24 nation's most successful consumer litigators where questions are asked and answered, ideas on
25 best practice are shared, and powerful consumer law remedies and attorney fee recovery
26 methods are learned. Built within the CRLC, following the main conference, is the Class Action
27 Symposium where attorneys learn about cutting-edge issues that confront class action

1 practitioners. The Symposium attracts 125-150 practitioners each year. Featured presenters at
2 the Consumer Class Action Symposium recently have included Deans Robert Klonoff and
3 Erwin Chemerinsky; Judges Richard Posner and William Young; State Attorney Generals Skip
4 Humphrey and John Kroger; Professors Richard Daynard, Linda Mullinix, Rick Marcus, Brian
5 Fitzpatrick, and Victoria Sahani;

6 **8. Legal Treatises and Consumer Law Publications:** NCLC publishes a
7 comprehensive 21-volume set of legal [treatises](#), widely cited in judicial opinions by courts,
8 including the United States Supreme Court. The American Bar Journal review of NCLC's
9 treatises described the series as "a monumental undertaking comparable to but more practical
10 than the Restatement of Laws." NCLC also produces books and other educational materials
11 intended for consumers themselves, and for our large network of lay advocates and service
12 providers. Written in clear and direct language, and updated regularly in its digital format, these
13 materials give practical advice on consumer rights.

14 **9.** Specifically, Invasion of Privacy is covered in the following treatises: *Unfair and*
15 *Deceptive Acts and Practices; Fair Debt; Fair Credit Reporting; Federal Deception Law; and*
16 *Repossessions*. The [Unfair and Deceptive Acts and Practices](#) treatise provides solid
17 understanding on how an unfair and deceptive acts and practices (UDAP) statute usually
18 provides attorney fees and enhanced damages for a wide array of deceptive or abusive practices
19 such as false advertising. For over 30 years, NCLC's UDAP manual has been the definitive
20 treatise in this area for use in all 50 states. It addresses issues related to: price fixing, antitrust
21 regulation, unfair competition, consumer refunds and cancellation rights, automatic renewal
22 provisions, unfair, illegal and unenforceable consumer contract terms, insurance products sales
23 or claims practices; predatory lending, loan brokers, and mortgage abuse; credit card abuses;
24 application to national banks; automobile sales, financing, leasing; manufactured homes and
25 parks; service contracts and auto repair; landlord-tenant, insurance, utilities; failure to disclose;
26 unfairness standards; liability of third parties for UDAP violations; scope of each state's UDAP
27 statute; and preconditions to litigation under each state's UDAP statute.

1 10. NCLC also publishes the *Consumer Class Actions* manual, a practical litigation
2 guide and how-to manual for handling a class action, even for small law offices, written by
3 experienced consumer class action litigators. It covers case selection and class definitions;
4 forum selection; class certification; class notice; and claims administration and distribution of
5 benefits, among many other topics. It is a comprehensive and highly praised resource designed
6 to give step-by-step advice on every major aspect of handling a consumer class case.

7 11. **Legal and Policy Analysis:** NCLC's legal and policy experts analyze regulatory
8 proposals; provide expert witness services; and research and write extensive Reports, Policy
9 Briefs, and formal regulatory comments on a wide range of consumer law matters, including on
10 (but not limited to) issues associated with the Telephone Consumer Protection Act (TCPA)
11 concerning consumer rights to privacy in their telephones, including cellular telephones; Truth
12 in Lending Act (TILA); the Fair Credit Reporting Act (FCRA); the Equal Credit Opportunity
13 Act (ECOA); the Fair Debt Collection Practices Act (FDCPA); the Fair and Accurate Credit
14 Transactions Act (FACTA), the Military Lending Act (MLA), and more.

15 12. **Public Education:** NCLC also responds to requests from journalists for
16 information and disseminates our research on important consumer issues. We are consulted for
17 background information and quoted regularly by *The New York Times*, *The Wall Street Journal*,
18 *USA Today*, *The Los Angeles Times*, *The Washington Post*, National Public Radio, and other
19 major news organizations. We work with the media to alert consumers to potentially misleading
20 business practices, and to provide tips on practical steps that the public can take to obtain relief
21 from (or not be harmed by) improper business conduct.

22 13. NCLC approves of the approach adopted by the American Law Institute in § 3.07
23 of its Principles of the Law of Aggregate Litigation regarding the criteria a court should apply to
24 determining whether a proposed *cy pres* distribution is appropriate. NCLC also adheres to, and
25 supports, Guideline 7, *Cy Pres Awards*, of the National Association of Consumer Advocates
26 Standards and Guidelines for Litigating and Settling Consumer Class Actions (3rd Ed. 2014).
27 The procedures set forth in these rules have been endorsed by federal courts as the best way to
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1 insure that: (1) there is a maximum distribution to class members; (2) the designation of the
 2 remaining funds will be allocated for uses that are most likely to further the interests of absent
 3 class members; and (3) the selection process is not tainted by self-interest.

4 14. NCLC has long been considered by courts to be a worthy recipient of *cy pres*
 5 awards. Since 1997, NCLC has been approved by courts to receive over 500 *cy pres* and class
 6 action settlement awards, all of which have been used to promote consumer protections and
 7 equal access to justice for consumers in need of effective legal representation. NCLC is a
 8 national organization and is therefore well tailored for cases that involve national harm. In
 9 support of this belief, in a final court order filed February 22, 2016 in *Brandewie v. Wal-Mart*,
 10 Case No. 1:14-cv-965 (N.D. Ohio) it was noted that the court “carefully scrutinized the
 11 proposed list of recipients and rejected all proposed recipients but one” – NCLC. The judge
 12 wrote in a court order filed December 16, 2015 (Doc. 82 in same case) awarding NCLC residual
 13 funds from the case “will further the interest of absent Class Settlement Members”.

14 15. Over the past 36+ months, NCLC has been the recipient of numerous TCPA
 15 violation related *cy pres* awards, including but not limited to: *Snyder v. Ocwen* (robo calls to
 16 cell phones); *Mankin v. Mountain West Research*; *Town & Country Jewelers v. Meadowbrook*;
 17 *Mey v. Patriot*; *Martinez v. Mediacredit*; *Willette v. Redflex*; *Etter v. Allstate*; and *Leung v. XPO*
 18 *Logistics*; and CA based cases including *Loftus v. Sunrun*; *Abante Rooter v. Alarm*; *Lee v.*
 19 *Global Tel Link Corp.*; *Malta v. Federal Home Loan Mortgage Corp.*, (3:10-cv-01290-BEN-
 20 *NLS*, So. District of CA, unsolicited text messages to cell phones); *Cabiness v. Educational*
 21 *Financial Solutions* (4:2016 cv 01109, No. District of CA, unsolicited calls to cell phones);
 22 *Naiman v. Total Merchant Services* (4:2017-cv-3806, No. District of CA, robo calls to cell
 23 phones) to name but a few.

24 16. NCLC maintains a strong working presence in the state if California and is
 25 heavily involved with helping to protect Californian consumers by working on bills including:
 26 **AB 2540**--After strong opposition from NCLC this bill that would have legitimized the use of
 27 “tips” as a disguised form of interest and undermine DFPI’s recent clarification that tips are
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1 “charges” under California law was dropped by the author. NCLC led the opposition to the bill.
2 Bill is dead for this session. **SB 1477**--For most workers it will double the amount protected
3 from wage seizures in debt collection judgements from \$600 to \$1,200 and lower the amount
4 that can be seized over the protected amount from 50% to 10%. Higher earners can have more
5 wages seized. NCLC with CRL was instrumental in getting the bill introduced and continues to
6 play a lead role by drafting materials, convening regular coalition calls and analysis of
7 opposition arguments. Bill is active and there is a good chance we will see some improvement
8 in wage seizure law. **PACE Restitution Fund**--Budget request for a \$65 million Property
9 Assessed Clean Energy fund (PACE) restitution fund to help defrauded homeowners and keep
10 them in their homes and communities. PACE funds energy efficiency home improvements
11 through property tax liens that can increase taxes by thousands of dollars a year. That property
12 tax lien is collected through a property tax assessment, paid on the property tax schedule, not
13 necessarily monthly, and the lien takes priority over any existing mortgage. Fraud and shoddy
14 work have marred the programs and Legal Services organizations in CA have been inundated
15 with clients facing the loss of their home because of the increased payments. Request is being
16 lobbied right now. **AB 2527**--A bill that would have restricted a landlord's use of credit reports
17 when making a rental housing decision. The bill is dead but as only the second state legislation
18 of its kind, there was value in developing the language, building support and gauging
19 opposition. We expect to work on this bill again next session. NCLC also retains a lobbyist to
20 assist us in our work in California.

21 17. Monies from a potential cy pres award in this class action settlement between
22 Gregory Franklin and Ocwen Loan Servicing, LLC would be used to further class interests by
23 allowing NCLC to focus on and update work on the treatises that relate to unfair and deceptive
24 practices and educate consumer and legal aid attorneys on best practices. NCLC holds
25 significant training on these topics and convenes groups of advocates to disperse this knowledge
26 more widely. NCLC would also use these monies to keep information on laws (including
27 California consumer protection laws) and statutes current.

