

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

WENDELL H. STONE COMPANY, INC.  
d/b/a STONE & COMPANY, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

LKQ CORPORATION, a Delaware  
corporation

Defendant

Case No. 1:16-cv-07648

Hon. Matthew F. Kennelly

**DECLARATION OF STEVEN L. WOODROW**

I, Steven L. Woodrow, declare as follows:

1. I am over the age of eighteen (18), and am one of the attorneys for Plaintiff and the Class in this matter. I make this declaration in support of Plaintiff's Motion for Preliminary Approval of the class action Settlement Agreement reached in the above captioned litigation. I am able to testify to the matters set forth herein if called upon to do so. I make the following statements based upon my own personal knowledge and based on facts learned during the litigation of this case.

***Class Counsel's Pre-Suit Investigation and Early Litigation***

2. Prior to filing the instant lawsuit my firm conducted an extensive investigation into LKQ Corporation ("LKQ") and its takeover of Coast Distribution. This included a "deep dive" into the nature of the acquisition and the potential liability that LKQ might have for Coast Distribution's conduct. This included reviewing case law and other authorities related to mergers and acquisitions. At the conclusion of this research we determined that LKQ would have liability

for Coast Distribution's faxes.

3. Through this investigation we also interviewed Plaintiff Stone's head of facilities and procurement, Mark Fiano, thoroughly regarding Stone & Company's receipt of facsimile advertisements from Coast Distribution, including proof of the faxes, the nature of the faxes, and any prior business dealings with The Coast Distribution system.

4. After we were satisfied internally that Plaintiff had received unlawful facsimile advertisements, we drafted the pleadings in the case, which included the Class Action Complaint. Following the issuance of a decision in another consumer class action we also drafted and filed a "placeholder" motion for class certification so as to protect the class from any attempts by LKQ to render the claims moot. We thereafter obtained service and prepared to litigate the case.

***The Parties Commence Early Settlement Discussions and Proceed to Mediation***

5. Early on, counsel for LKQ—attorneys from the law firm of Shook, Hardy & Bacon LLP—reached out to my firm and we engaged in frank discussions about the case. These discussions included the exchange of information regarding the number of people in the alleged class, Coast Distribution's facsimile advertisement program, and potential prior relationships with Plaintiff. We also discussed the legal landscape surrounding these types of consumer class actions and the potential for early resolution.

6. These talks eventually progressed to the point that the Parties decided to engage in an early mediation. The Parties agreed to use the Honorable Morton J. Denlow (Ret.) of JAMS as a mediator. As the Court is well aware, Magistrate Judge Denlow has extensive experience in mediating and settling large TCPA class actions. Magistrate Judge Denlow pushed both Parties to settle on the terms ultimately agreed to.

7. Furthermore, the mediation process involved additional exchange of information,

particularly as to the prior relationship issue, which had direct relevance to the case given the D.C. Circuit's present of review of the FCC's 2015 TCPA Order.

8. Ultimately, the Parties were able to reach an agreement in principle to resolve this case on a class-wide basis on a framework that would result in fair compensation to the Settlement Class. Further, after agreeing in principle to the relief to be made available to the Settlement Class, the Parties discussed reasonable attorney's fees and incentive awards.

9. The Parties left the mediation session with a signed term sheet and worked together in the days and weeks following the mediation to quickly draft and execute settlement documents and present them to the Court for preliminary approval.

10. During the mediation the Parties discussed the need for some modest confirmatory discovery so as to verify the information disclosed at the mediation. Most of this has already been accomplished through voluntary disclosures produced by LKQ, which proposed Class Counsel have had the opportunity to review and analyze. As such, the amount of information disclosed prior to, during, and following the mediation allowed proposed Class Counsel to intelligently evaluate the Settlement and confirm the accuracy of the information disclosed during the mediation.

#### **Proposed Class Counsel's Opinion of the Settlement Agreement**

11. Proposed Class Counsel is pleased to present the terms of the Settlement Agreement to the Court. The terms are unquestionably strong when viewed against other TCPA settlements reached to date. The per-claim monetary amounts are projected to fall at the higher end of such settlements. That is, our research generally indicates that the typical recovery in TCPA class actions is \$145. Under the terms of the instant Settlement, administrative expenses will likely be held to under \$30,000. If full attorneys' fees and class representative incentive

awards are granted by the Court, that would result in a per Settlement Class Member recovery of \$329.25. That is,  $\$3,266,500 - (\$30,000 \text{ (notice and admin)} + \$1,077,945 \text{ (attorneys' fees)} + \$7,500 \text{ (incentive award)}) = \$2,151,046$ . In turn,  $\$2,151,046/6,533 \text{ Settlement Class Members} = \mathbf{\$329.25}$ . And this is without the need to file any claim at all. Moreover, the amount recovered will *increase* in the event any Settlement Class Members choose to

12. This is particularly true given the strength of LKQ's potential defenses. In the faxes at issue, recipients were notified of their ability to opt out—the violation here stems from the absence of “magic language”. This raises potential Article III concerns and issues of waiver and estoppel. This is in addition to the fact that the DC Circuit is presently reviewing the legal issues central to this case, and an adverse ruling could negatively impact the Class's ability to recover anything. Further, many of the Class members reportedly used the faxes in their business dealings with Coast Distribution, providing additional ammunition to LKQ for its defenses.

13. Even if Plaintiff were to overcome these defenses and certify the class in an adversarial setting, both certification and judgment would be subject to appeals, motions for re-hearing, and additional delays.

14. Given the issues Plaintiff and the Class would face if the litigation continued, recovery by each Class Member in the amount of a single fax is reasonable. In fact, to allow the recovery for multiple faxes would potentially result in a windfall for Class Members who used the faxes to order supplies from Coast. Indeed, while under a strict reading of the statute LKQ could face a judgment between \$38,500,000 and \$115,000,000, in reality such an amount is punitive and unlikely to be sustained on appeal. At some point the damages must reflect the severity of the violations.

15. Simply put, Plaintiff and the Class faced an uncertain battle convincing the Court

that LKQ's technical violations of the TCPA warranted over \$30 million in statutory damages.

16. The settlement is further strong because Class Members need not file a claim to receive money and there is no reverter—this settlement is an “all-in” model. This means that unlike Settlements where claims must be filed and class members receive little every Settlement Class Member (who doesn't submit a request to be excluded) will receive a recovery that doubles awards in typical TCPA settlements.

Further affiant sayeth not.

Signed this 20th day of January, 2017 in Denver, Colorado.

/s/ Steven L. Woodrow