

HON. SALVADOR MENDOZA JR.

Clay M. Gatens
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VALERIE RHODES, a single woman,
and on behalf of others similarly situated,

Plaintiff,

vs.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, A National Banking
Association

Defendant.

NO. 2:17-CV-0093-SMJ

DECLARATION OF
PETER A. SPADONI IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND SERVICE
AWARD

CLASS ACTION

PETER A. SPADONI, pursuant to 28 U.S.C. § 1746, declares:

1. I am a principal and managing partner at Jeffers, Danielson, Sonn & Aylward, P.S. ("JDSA"). I am over 18 years of age, make this declaration based upon my own personal knowledge, and I am competent to testify to the matters asserted herein.

2. I my undergraduate degree in Economics from Washington State University, my Juris Doctorate from the University of Puget Sound Law School, and an LLM in

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1 Taxation from the University of Florida School of Law. I am admitted to practice in
2 Washington state and Florida. I was admitted to practice in Washington in 1980.

3 3. Jeffers, Danielson, Sonn & Aylward (“JDSA”) is a law firm in Wenatchee,
4 Washington that has been in existence since 1946. I have been at JDSA since 1983. JDSA’s
5 complex civil litigation practice group focuses on complex civil and commercial litigation
6 with an emphasis on consumer protection class actions. JDSA has prosecuted (and is
7 prosecuting) multiple putative and certified consumer class actions, which include
8 enforcement of borrowers’ pre-foreclosure rights.

9 4. JDSA is lead class counsel in *Laura Zamora Jordan v. Nationstar Mortgage,*
10 *LLC*, which is currently proceeding in the Eastern District of Washington under cause
11 number 2:14-CV-0175-TOR. Clay M. Gatens is a principal at JDSA and successfully
12 argued the case in front of the Washington State Supreme Court, resulting in *Jordan v.*
13 *Nationstar Mortgage, LLC*, 185 Wn.2d 876, 374 Wn.2d 976 (2016), the *en banc* opinion
14 holding that property-related activities such as those at issue in this case violate
15 Washington law. Clay Gatens also argued this case in front of the Ninth Circuit in *Jordan*
16 *v. Nationstar Mortgage, LLC*, 781 F.3d 1178 (9th Cir. 2015) relating to removal under the
17 Class Action Fairness Act.

18 5. Clay Gatens successfully argued in front of the Ninth Circuit in *Bess v. Ocwen*
19 *Loan Servicing, LLC*, No. 15-35550, 2018 U.S. App. 2018 WL 1223446, at *2 (9th Cir.

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1 Mar. 9, 2018), which resulted in remand of a prior dismissal of a case involving pre-
2 foreclosure entries and lock changes. JDSA is lead counsel in the *Bess* case.

3 6. JDSA is also lead counsel in the following cases involving default borrowers
4 and pre-foreclosure property preservation activities conducted by lenders, loan servicers,
5 and property services companies:

- 6 • *John Bund II, et al. v. Safeguard Properties, LLC*, No. 2:16-cv-920 MJP,
7 W.D. Wash. (class certified January 12, 2018);
- 8 • *Gina L. Britton v. ServiceLink Field Services, LLC*, No. 2:18-cv-0041-TOR,
9 E.D. Wash.;
- 10 • *Crystal Haynes et al., v. Bank of America*, No. 3:18-cv005190-BHS, W.D.
11 Wash.

12 7. JDSA was also lead counsel in two putative class actions involving default
13 borrowers and pre-foreclosure property preservation activities conducted by lenders and
14 loan servicers that have since been dismissed.

- 15 • *Nathan F. Elmore v. Bank of America N.A.*, No. 2:14-CV-241-JLQ, E.D.
16 Wash.
- 17 • *David and Rhonda Huber and D&R Capital, LLC v. Wells Fargo Bank, N.A.*,
18 No. CV-15-00051-TSZ, W.D. Wash.

19 8. Both of these cases were dismissed prior to class certification, resulting in
20 significant losses to JDSA. JDSA took on the instant case knowing full well that it might

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1 not receive *any* compensation, let alone compensation sufficient to cover its business
2 expectancy losses and hard costs.

3 9. This case engendered significant risk and expense. JDSA would not undertake
4 representation of plaintiffs in high risk consumer class actions such as this if it was only
5 paid for its attorneys' regular hourly rates and only if the Plaintiffs were successful.

6 10. Clay Gatens acted as a homeowner advocate in front of the Washington State
7 Legislature during the 2017 and 2018 legislative session and the passing of 2018 Wash.
8 Sess. Laws ch. 306 §§ 10–13. Mr. Gatens' work at the State Legislature required he expend
9 a significant amount of time — time that he otherwise could have spent generating revenue
10 for JDSA.

11 11. I am intimately familiar with the legal issues in this case and in consumer class
12 actions generally. I believe the Settlement is fair, reasonable, adequate, and in the best
13 interest of the Settlement Class as a whole.

14 12. Clay Gatens leads the complex civil litigation practice group at JDSA. His
15 work focuses on consumer protection, commercial real estate, and wage and hour matters.
16 He has been actively involved in every aspect of every class action prosecuted by JDSA
17 since 2010.

18 13. Clay Gatens has prosecuted the instant case at great personal expense and
19 financial risk. JDSA's compensation model is such that each principal member's annual
20 draw is based on how many dollars were brought in by the member during the year and on

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1 a five-year rolling average. Class action litigation that draws out for years does not result
2 in any dollars brought in for the firm until they are successfully settled.

3 14. Clay Gatens' compensation over the past six years has been negatively
4 affected by his prosecution of these consumer class actions, including this action
5 specifically. Mr. Gatens has had a negative rolling five-year average as a result of the time
6 that he has dedicated to this action as well as other related consumer class actions over the
7 past 5 years. Due to Mr. Gatens' decrease in revenue, he was not provided with the
8 compensation one would typically expect of a partner with equal experience who was
9 engaged in traditional billable work.

10 15. Mr. Gatens' revenue losses also negatively affected JDSA and all partners.
11 Due to Mr. Gatens' negative rolling averages, JDSA and its remaining partners have had
12 to cover significant overhead expenses that would have otherwise been paid through Mr.
13 Gatens' revenue. JDSA has also paid significant staff, paralegal and associate salaries and
14 expenses for time spent on this action. Had we not been prosecuting this action, those hours
15 would likely have been dedicated to billable work, which JDSA would have typically
16 recovered on an hourly basis.

17 16. I am aware that Mr. Gatens has had to forego other work for which he would
18 have been compensated immediately on an hourly basis as a result of the time that he has
19 dedicated to this action.

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1 I declare under penalty of perjury under the laws of the state of Washington that the
2 foregoing is true and correct.

3 DATED the 1st day of October, 2018.

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5 PETER A. SPADONI

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to the parties listed below by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

Rudy A. Englund: englundr@lanepowell.com
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DATED at Wenatchee, Washington this 1st day of October, 2018.

s/CLAY M. GATENS
Clay M. Gatens, WSBA No. 34102
Attorney for Plaintiff
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