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8 *Attorneys for Plaintiff*

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

14 JAMES KNAPP, individually and on behalf of
all others similarly situated,

15 Plaintiff,

17 v.

18 ART.COM, Inc., a California corporation; and
DOES 1 through 50, inclusive,

19 Defendants.

CASE NO.: 3:16-cv-00768-WHO

[Honorable William H. Orrick]

**DECLARATION OF JASON H. KIM IN
SUPPORT OF PLAINTIFF'S MOTION
FOR APPROVAL OF ATTORNEYS'
FEES AND COSTS AND CLASS
REPRESENTATIVE SERVICE AWARD;
EXHIBITS 1-5**

Date: August 9, 2017

Time: 2:00 p.m.

Courtroom: 2

Complaint filed: February 16, 2016

Trial Date: January 8, 2018

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DECLARATION OF JASON H. KIM

I, Jason H. Kim, hereby declare:

1 I am a member in good standing of the California State Bar, and am a partner at
2 Schneider Wallace Cottrell Konecky Wotkyns LLP (“SWCKW”), counsel of record for Plaintiff
3 and the Class in this action. The facts set forth herein are personally known to me, and I have
4 personal knowledge of the same.

5 2. I make this declaration in support of Plaintiff’s Motion for Final Approval of Class
6 Action Settlement.

7 3. I graduated from Harvard Law School in 1998 and have been engaged in the
8 practice of civil litigation since then, with the exception of one year in which I served as a Deputy
9 Prosecuting Attorney for the City and County of Honolulu. Thus, I have nineteen years of legal
10 experience. Most of my legal experience has been in complex and class action litigation. During
11 my career, I have worked at two leading law firms with nationally-recognized litigation practices,
12 Hogan & Hartson (now Hogan Lovells) and O’Melveny & Myers.

13 4. Based on the extensive investigation and litigation of this matter by my firm and
14 co-counsel as described in previous declarations, Class Counsel support the proposed Settlement
15 in this matter as fair, reasonable, and adequate and in the best interests of the Class.

16 5. Of particular significance, during the course of the settlement negotiations, Class
17 Counsel was informed that the average un-serviced price for an item sold on the Art.com websites
18 was approximately \$17 and that on average, each Class member made 1.4 purchases from these
19 websites during the Class period.

20 6. Pursuant to the Settlement Agreement in this case, the parties agreed that Plaintiff
21 would seek an award of attorneys’ fees and costs of \$745,000. This amount was not calculated or
22 negotiated as a percentage of the total value of the settlement to the class. Rather, it was calculated
23 and negotiated based on: (1) the attorneys’ fees and costs that had actually been incurred by
24 Plaintiff’s counsel at the time; (2) an estimate of the additional attorneys’ fees and costs that

1 would be incurred from the settlement in principle to the conclusion of this matter; and (3) a
2 lodestar enhancement.

3 7. Class Counsel negotiated with Art.com to reach an agreed-upon fee amount that
4 they regarded as reasonable based on the benefits achieved for the Class and applicable legal
5 principles, and did so only after they reached agreement on the other key deal terms – namely, the
6 classwide monetary and non-monetary relief.

7 8. The amount of attorneys’ fees and costs, like the other terms of the settlement, was
8 agreed upon under the auspices and with the assistance of David A. Rotman, an experienced, well-
9 respected mediator. Mr. Rotman will provide a declaration in support of this Motion that will be
10 filed separately.

11 9. After notice was provide to the Class, I received approximately 150 emails from
12 class members. The predominant inquiry was when and how the Vouchers that Class members
13 would receive pursuant to the Settlement (if approved) would be issued. Towards that end,
14 numerous Class members provided updated email addresses and/or physical mailing addresses.

15 10. I also received some comments critical of the proposed Settlement that in substance
16 were similar to the objections filed with the Court.

17 11. These email communications have been provided to the Settlement Administrator
18 and will be provided to the Court upon request. I did not believe it was appropriate to file them in
19 the public record, as it was unclear whether the authors intended their comments to be public.

20 12. I understand that counsel for Art.com directed the Settlement Administrator to
21 issue the notice to certain government officials, as required by the Class Action Fairness Act. No
22 representative of any of these government officials has been in communication with me or my co-
23 counsel to object to or comment in any way on the Settlement.

24 13. In the course of negotiating the Settlement Agreement, the parties decided that any
25 portion of the award of attorneys’ fees and costs or incentive award to Plaintiff that was not
26 approved by the Court would be donated to an appropriate organization. I suggested the National
27 Consumer Law Center (“NCLC”) as the designee, primarily because it was a *cy pres* designee in a
28 case similar to this one, *Spann v. J.C. Penney Corp.*, No. SA CV 12-0215 (C.D. Cal.). At the time

1 I made this suggestion, I was not aware that my firm was co-counsel with the NCLC in another
2 matter pending in the Northern District of California. I have no involvement in that matter and
3 none of the attorneys who have involvement in that matter had any influence on my suggestion to
4 designate the NCLC in this case.

5 I declare under penalty of perjury under the laws of the United States of America and the
6 State of California that the foregoing is true and correct.

7 Executed on July 27, 2017 at Los Angeles, California.

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/s/ Jason H. Kim

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