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8 *Attorneys for Plaintiff*

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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.: 16-cv-00768-WHO

[Honorable William H. Orrick]

**DECLARATION OF JASON H. KIM IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: April 12, 2017  
Time: 2:00 p.m.  
Courtroom: 2

Complaint filed: February 16, 2016  
Trial Date: January 8, 2018

**DECLARATION OF JASON H. KIM**

1  
2 I, Jason H. Kim, hereby declare:

3 1 I am a member in good standing of the California State Bar, and I am an attorney at  
4 Schneider Wallace Cottrell Konecky Wotkyns LLP, counsel of record for Plaintiff in this action.  
5 The facts set forth herein are personally known to me, and I have firsthand knowledge of same. If  
6 called as a witness, I could and would competently testify thereto.

7 2. I make this declaration in support of Plaintiff's Motion for Preliminary Approval of  
8 Class Action Settlement.

9 3. The parties and counsel have executed a Settlement Agreement, a true and copy of  
10 which is attached hereto as **Exhibit 1**.

11 4. The Settlement Agreement was reached following extensive negotiations during a  
12 private mediation session with David Rotman on November 10, 2016. The settlement negotiations  
13 were at arm's length and, although conducted in a professional manner, were adversarial. The  
14 parties went into the mediation session willing to explore the potential for a settlement of the  
15 dispute, but each side was also committed and prepared to vigorously litigate the case if a  
16 settlement had not been reached. This is demonstrated by the parties' respective motions for class  
17 certification and summary judgment, which were on file with the Court before the mediation  
18 occurred.

19 5. Plaintiff and his counsel conducted a thorough investigation and completed  
20 substantial discovery before participating in the mediation. Among other things, Plaintiff's counsel  
21 monitored Art.com's publicly advertised sales for a period of several months before filing the  
22 complaint. Once litigation commenced, the parties conducted extensive discovery into the merits  
23 of Plaintiff's claims and class certification issues. Plaintiff sat for deposition and took the  
24 deposition of Art.com's Rule 30(b)(6) designee on its sales and advertising practices. The parties  
25 also exchanged substantial written discovery. The parties exchanged thousands of pages of  
26 documents, including sales data, Art.com's internal documents concerning its advertising, pricing,  
27 and promotional practices, and actual advertisements disseminated to consumers. Plaintiff also  
28 retained two well-qualified experts in the fields of marketing and accounting. Thus, Plaintiff and

1 his counsel were well-apprised of the salient legal and factual issues before participating in the  
2 mediation.

3 6. When the risks of litigation, the uncertainties involved in achieving class  
4 certification, the burdens of proof necessary to establish liability, and the probability of appeal of a  
5 favorable judgment are balanced against the merits of Plaintiff's claims, it is Plaintiff's counsel's  
6 belief that the settlement amount is fair, adequate, and reasonable and that there no deficiencies in  
7 the proposed settlement.

8 7. Plaintiff's counsel believes that the maximum monetary benefit attainable for the  
9 Class, based on restitution, would be approximately \$40 million. This estimate is based on my  
10 review of confidential pricing and sales data that Art.com produced in this litigation and my  
11 consultation with an expert witness. Thus, the \$20 million Voucher settlement represents about 50  
12 percent of the maximum recovery, exclusive of interest and attorneys' fees. Art.com contests  
13 liability, as well as the propriety of certification, and is prepared to vigorously oppose certification  
14 and to defend against Plaintiff's claims if the action is not settled.

15 8. Art.com has a motion for summary judgement on file. This motion, if granted,  
16 would essentially eviscerate all of Plaintiff's claims and remedies, leaving a class of  
17 approximately 2 million people with nothing. Although Plaintiff disputes the merits of Art.com's  
18 summary judgment motion, the risk that the Court would grant the motion is a factor that weighs  
19 in favor of approving this settlement.

20 9. I have calculated an estimate of my firm's current reimbursable costs and the  
21 amount of time my firm spent litigating this case. I have also consulted with co-counsel in this  
22 case, Aubry Wand of the Wand Law Firm, regarding his firm's reimbursable costs and time spent  
23 litigating this case. Collectively, Plaintiff's counsel's current reimbursable costs are approximately  
24 \$59,000 and their lodestar is approximately \$500,000.

25 10 As a condition of the Settlement, Art.com is responsible for paying all Settlement  
26 Administration costs up to \$75,000. The parties have selected an experienced and well-qualified  
27 settlement administrator, Heffler Claims Group, to administer class notice and settlement.  
28

1           11. Plaintiff has provided significant, valuable assistance in the investigation and  
2 prosecution of this matter, and helped to bring about the Settlement now before this Court. Among  
3 other things, Plaintiff has participated in many discussions with Class Counsel, provided  
4 declarations, appeared for deposition, and assisted with other discovery.

5           12. My firm, along with co-counsel the Wand Law Firm, is qualified to handle this  
6 litigation because we are experienced in litigating class action cases. My firm has handled, and is  
7 currently handling, numerous consumer class action lawsuits. My firm has successfully resolved  
8 numerous class action lawsuits. My firm and co-counsel have vigorously litigated this case on  
9 behalf of Plaintiff and the proposed Class. Attached as **Exhibit 2** is a resume outlining the  
10 qualifications and experience of Schneider Wallace Cottrell Konecky Wotkyns.

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

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Executed on March 2, 2017 at Los Angeles, California.

/s/ Jason H. Kim