

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

BRIGHTON TRUSTEES, LLC,  
AS TRUSTEE, *et al.*,

Plaintiffs,

v.

Case No: 3:20-cv-240-DJN

GENWORTH LIFE AND ANNUITY  
INSURANCE COMPANY,

Defendant.

**DECLARATION OF KRISTI C. KELLY**

I, Kristi C. Kelly declare:

1. My name is Kristi C. Kelly. I am over 21 years of age, of sound mind, capable of executing this declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.

**BACKGROUND AND QUALIFICATIONS**

2. I am a founder and a partner of Kelly Guzzo, PLC, a law firm located at 3925 Chain Bridge Road, Suite 202, Fairfax, Virginia 22030. Prior to January 15, 2014, I was an attorney and equity partner at Surovell Isaacs Petersen & Levy, PLC, a nineteen-attorney law firm with offices in Fairfax, Virginia. My primary office was 4010 University Drive, Suite 200, Fairfax, Virginia 22030. I also worked for Legal Services of Northern Virginia, focusing exclusively on housing and consumer law for approximately three years prior to Surovell Isaacs Petersen & Levy, PLC.

3. Since 2006, I have been and presently am a member in good standing of the Bar of the highest court of the Commonwealth of Virginia, where I regularly practice law. Since 2007, I have been and presently am a member in good standing of the Bar of the highest courts of the

District of Columbia and since 2014 of Maryland. I am also admitted in the United States District Courts for the District of Columbia and Maryland.

4. I have taught numerous Continuing Legal Education programs for other attorneys and for various legal aid organizations, state and local bar associations, and other groups focused on consumer law, such as the National Consumer Law Center, the Consumer Federation of America, the National Council of Higher Education, and the National Association of Consumer Advocates. I have taught courses about mortgage servicing abuses, landlord tenant defense, dealing with debt collectors, credit reporting, defenses to foreclosure, discovery in federal court, resolving cases, and internet lending. I also served as a panelist for the Consumer Financial Protection Bureau and Federal Trade Commission on the issue of credit reporting.

5. My peers have recognized me as a Super Lawyer and Rising Star consistently for the past ten years. Additionally, I was selected to be a member of the Virginia Lawyers Weekly “Leader in the Law,” class of 2014, and Influential Women in the Law, class of 2020. I serve on the Board of Directors for the Legal Aid Justice Center and Virginia Poverty Law Center. I am a former State Chair for Virginia of the National Association of Consumer Advocates and am currently a member of the Partners’ Council for the National Consumer Law Center and Board of Directors of the National Association of Consumer Advocates.

6. I have also been appointed to the Merit Selection Panel for recommendations for the Magistrate Judge vacancies by the United States District Court for the Eastern District of Virginia, in both the Richmond and Alexandria Divisions.

7. My firm has litigated hundreds of consumer protection lawsuits in courts across the country. Several courts have recognized Kelly Guzzo’s skill in prosecuting class actions for various consumer protection violations. *See, e.g., Campos-Carranza v. Credit Plus, Inc.*, Case No. 16-cv-120, Final Approval Hr’g Trans. at 5:37 (E.D. Va. Feb. 17, 2017) (“I think this is an

extremely, as I say, extremely fair, reasonable, and adequate settlement. Again, the claims – and I think being generous on the time limit for the claims was also appropriate. So I have no difficulty in signing this order.”); *Ceccone v. Equifax Info. Servs. LLC*, No. 13-1314, 2016 WL 5107202, at \*6 (D.D.C. Aug. 29, 2016) (“Given these qualifications, and in light of Class Counsel’s conduct in court and throughout these proceeding, this Court concludes that Class Counsel is qualified to prosecute the interests of this class vigorously.”); *Dreher v. Experian Info. Sols., Inc.*, No. 11-00624, 2014 WL 2800766, at \*2 (E.D. Va. June 19, 2014) (“Dreher’s counsel is well- experienced in the arena of FCRA class action litigation.”); *Burke v. Seterus, Inc.*, No. 16-cv-785, Fairness Hr’g Tr. at 9:1922 (E.D. Va. 2017) (“Experience of counsel on both sides in this case is extraordinary. Ms. Kelly and Ms. Nash and their colleagues are here in this court all the time with these kinds of cases and do a good job on them.”).

8. I have experience litigating class actions on behalf of consumers and have been found to be adequate class counsel in numerous cases. See *Tsvetovat v. Segan, Mason, & Mason, PC*, No. 1:12-cv-510 (E.D. Va.); *Conley v. First Tennessee Bank*, No. 1:10-cv-1247 (E.D. Va.); *Dreher v. Experian Information Solutions, Inc.*, No. 3:11-cv-624 (E.D. Va.); *Shami v. Middle East Broadcast Network*, No. 1:13-cv-467 (E.D. Va.); *Goodrow v. Friedman & MacFadyen*, No. 3:11-cv-20 (E.D. Va.); *Kelly v. Nationstar*, No. 3:13-cv-311 (E.D. Va.); *Thomas v. Wittstadt*, No. 3:12-cv-450 (E.D. Va.); *Fariasantos v. Rosenberg & Associates, LLC*, No. 3:13-cv-543 (E.D. Va.); *Morgan v. McCabe Weisberg & Conway, LLC*, No. 3:14-cv-695 (E.D. Va.); *Burke v. Shapiro, Brown & Alt, LLP*, No. 3:14-cv-838 (E.D. Va.); *Bartlow v Medical Facilities of America, Inc.*, No. 3:16-cv-573 (E.D. Va.); *Blocker v. Marshalls of MA, Inc.*, No. 1:14-cv-1940 (D.D.C.); *Ceccone v. Equifax Info. Servs., LLC*, Case No. 1:13-cv-1314 (D.D.C.); *Jenkins v. Equifax Info. Servs., LLC*, No. 1:15-cv-443 (E.D. Va.); *Ridenour v. Multi-Color Corporation*, No. 2:15-cv-00041 (E.D. Va.); *Hayes v. Delbert Services Corp.*, No. 3:14-cv-258 (E.D. Va.); *Campos-Carranza v. Credit Plus*,

*Inc.*, No. 1:16-cv-120 (E.D. Va.); *Jenkins v. Realpage, Inc.*, No. 2:15-cv-1520 (E.D. Pa.); *Kelly v. First Advantage Background Services, Corp.*, No. 3:15-cv-5813 (D.N.J.); *Burke v. Seterus, Inc.*, No. 3:16-cv-785 (E.D. Va.); *Williams v. Corelogic Rental Property Solutions, LLC*, No. 8:16-cv-58 (D. Md.); *Clark v. Trans Union, LLC*, No. 3:15-cv-391 (E.D. Va.); *Clark v. Experian Information Solutions, Inc.*, No. 3:16-cv-32 (E.D. Va.); *Thomas v. Equifax Info. Servs., LLC*, No. 3:18-cv-684 (E.D. Va.); *Heath v. Trans Union, LLC*, No. 3:18-cv-720 (E.D. Va.); *Turner v. ZestFinance, Inc.*, No. 3:19-cv-293 (E.D. Va.); *Galloway v. Williams*, No. 3:19-cv-470 (E.D. Va.); *Gibbs v. TCVV, LP*, No. 3:19-cv-789 (E.D. Va.); *Gibbs v. Rees*, No. 3:20-cv-717 (E.D. Va.); *Pang v. Credit Plus, Inc.*, No. 1:20-cv-122 (D. Md.); *Brown v. RP On-Site, LLC*, No. 1:20-cv-482 (E.D. Va.); and *Brown v. Corelogic Rental Property Solutions, LLC*, No. 3:20-dv-363 (E.D. Va.).

9. I have also previously opined on the reasonableness of the fees of other practitioners in individual cases in the Eastern District of Virginia. Most recently, I provided a declaration to support the fee request in Arlington Circuit Court in *Powell v Prime Motors, LLC*, No. CL20001773-00 and in support of the Legal Aid Justice Center in *Martinez Garcia v. Mega Auto Outlet*, No. 1:20-cv-945 (E.D. Va.).

10. My fee for this Declaration is \$15,000.00, all of which will be paid by donation directly to Restoration Immigration Legal Aid.

#### DOCUMENTS REVIEWED

11. In order to perform this evaluation, I had conversations with Plaintiffs' counsel and reviewed the following materials:

Entire Docket History on PACER

Consolidated Complaint

Joint Discovery Brief

Expert Report of Howard Zail

Expert Report of Robert Mills

Oppositions to Motion to Exclude Howard Zail

Oppositions to Motion to Exclude Robert Mills

Memorandum Opinion Denying Daubert Motions

Deposition Transcript of Allison Ball

Deposition Transcript of Jack Gibson

Deposition Transcript of Kristi Leighton

Deposition Transcript of Laird Zacheis

Deposition Transcript of Lisa Kuklinski

Deposition Transcript of Maria Tabb

Deposition Transcript of Mike Drago

Deposition Transcript of Peter James

Deposition Transcript of Carrie Jaso (as fact witness)

Deposition Transcript of Carrie Jaso (as 30b6 deponent)

Memorandum in Support of Class Certification (and accompanying exhibits)

Reply in Support of Class Certification

Joint Stipulation and Settlement Agreement

Plaintiffs' Motion for Preliminary Approval of Class Action Settlement

Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement

Order Preliminarily Approving Class Action Settlement

Time and Expense Entries

Biographies of Plaintiffs' Counsel

12. This was a complex case requiring special expertise at the risk of nonpayment. It is comparable to the more complex consumer class actions that I have been involved with.

13. I have extensive experience in class action cases brought in this Court, and in the Eastern District of Virginia. I routinely represent plaintiffs in cases concerning various consumer protection statutes. I have been involved in many cases involving requests for attorneys' fees under different statutes and am familiar with the rates charged by both plaintiffs' and defense attorneys in this region. My knowledge of the attorneys' fee recoveries, and rates in the Eastern District of Virginia and this region comes from a variety of sources, including my own personal experience requesting, or opposing requests for attorneys' fees, research and discussions with other attorneys, advertised rates, case decisions and other publications.

14. Given the specific knowledge I have as to attorneys' fees awarded and charged in class actions in the Eastern District of Virginia, I am able to testify as to the reasonable and expected ranges of fees in class action settlements and the reasonableness of the time expended and hourly rates charged by attorneys that practice in this District and Division as part of any lodestar crosscheck.

15. I am familiar with the fees charged by other attorneys and approved by this Court for class action litigation. Attorneys' fees in most class settlements are calculated as a percentage of the settlement fund unless a fee amount is separately negotiated at the settlement, usually with the assistance of a mediator or Magistrate Judge. Most percentage fees in class settlements that I am aware of are generally between 30 and 35%.

16. In this case, Plaintiffs have recovered a gross settlement common fund of \$25,000,000.00 (which may be reduced on a *pro rata* basis depending on the number opt-outs). In addition, Plaintiffs have recovered substantial prospective monetary relief, including a cost of insurance rate scale freeze for 7 years and a permanent non-contestability benefit that an expert in

longevity products has valued to be substantial. The one-third fee sought by Plaintiffs' counsel here solely from the cash fund, viewed in isolation of the other benefits achieved, is a reasonable percentage that is not an outlier, but rather, it is consistent with my expectations for awards made for a fund of this size. I believe that an attorneys' fee award of one-third of the cash fund in this instance is fair and appropriate.

17. I strongly believe that attorneys should be paid in class action common fund settlements based on the results, *i.e.*: cash-recovered and other non-cash benefits earned on behalf of the class. This aligns the interests of the class and class counsel and it promotes sound public policy to encourage thoughtful, efficient and strategic litigation, such as this, making this settlement possible.

18. I have reviewed the time entries and biographies of the lawyers representing Plaintiffs in this litigation, and although I have not observed or worked with the firms, I have reviewed the time records and work product, and I believe the time records reflect reasonable time expended for a case of this magnitude and complexity. Further, the results of this litigation speak for themselves in terms of skill, experience, and diligence in approach to this litigation. I am familiar with defense counsel and have litigated opposite them in many cases as well. I know them to be well-respected, aggressive and skilled opponents.

19. Given the specific knowledge I have as to hourly rates charged and approved in the Eastern District of Virginia, I am comfortable stating that Class Counsel's hourly rates are within the range of hourly rates for federal litigation attorneys in the Eastern District of Virginia range. This is further supported by the Laffey Matrix.<sup>1</sup> See <http://www.laffeymatrix.com/see.html>. I

---

<sup>1</sup> The Laffey Matrix was originally developed by the U.S. Department of Justice and is adjusted by the nationwide legal services component of the Consumer Price Index produced by the U.S. Bureau of Labor Statistics. See, e.g., *DL v. Dist. of Columbia*, 924 F.3d 585 (D.C. Cir. 2019) (discussing the history and basis of the Laffey matrix); *Baker v. D.C. Pub. Schs.*, 815 F. Supp. 2d

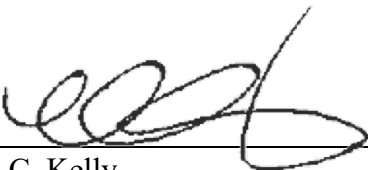
believe the rates here are reasonable for the specialized attorneys prosecuting this case which involved complex actuarial and technical insurance modelling and issues. Here, Plaintiffs expended over 3,484 hours to prosecute this complex action, and I believe this to be reasonable for a case of this magnitude and complexity.

12. I have also reviewed a survey of AmLaw 50 law firms performed by PwC Product Sales, LLC issued in October 2021. That survey states that the median standard billing rate for an equity partner was \$1,253 and for associates was \$819. The rates for Class Counsel and its staff who billed significant amounts of time to this case (ranging from \$350 to \$1200) per hour are comparable to similar law firms litigating matters of similar magnitude.

13. It is my understanding that these are the rates routinely charged by these law firms in the national practices of each. Ordinary hourly rates in Richmond, Virginia are typically lower than some larger venues. However, the field and expertise necessary in a national class action against well-funded nationally defended opponents is the same here as in any venue. Accordingly, I am comfortable stating that the rates contained in the Steven Sklaver, Andrew Friedman, and Kathleen Holmes declarations are all within the range of approvable hourly charges appropriate in a federal and national class action settlement.

I declare under penalty of perjury of the laws of the United States that the foregoing is correct.

Signed this 8<sup>th</sup> day of July, 2022.

  
\_\_\_\_\_  
Kristi C. Kelly