

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OR AMERICA,

Plaintiffs,

v.

FAIRBANKS CAPITAL CORP. and  
FAIRBANKS CAPITAL HOLDING CORP.,

Defendants.

Civil Action No. 03-12219-DPW

ALANNA L. CURRY *et al.*,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

FAIRBANKS CAPITAL CORP.,

Defendant.

Civil Action No. 03-10895-DPW

**DECLARATION OF DANIEL J. MULLIGAN**

**IN SUPPORT OF PRELIMINARY APPROVAL**

I, Daniel J. Mulligan, declare as follows:

1. I am an attorney admitted to all the Courts of California and am a partner in the law firm of Jenkins & Mulligan. I have personal knowledge of the facts stated herein and could and would competently testify thereto if called to do so. Jenkins & Mulligan has, over the last 11 years, specialized in consumer class litigation, primarily in connection with sub-prime lending and foreclosure practices. We have been lead, or co-lead counsel in numerous cases

during that time, including some of the largest consumer class recoveries ever obtained. I have taught seminars and various trainings on these topics throughout the United States and am recognized as an expert in this area. A copy of the firm resume is attached hereto.

2. Jenkins & Mulligan filed *Anders v. Fairbanks Capital Corp.* in the Contra Costa County Superior Court in California on October 25, 2002, after investigating Fairbanks' practices for months. The *Anders* case was brought as a class action and was later consolidated with other California filed cases in the same court.

3. After *Anders* was filed, defendant Fairbanks Capital Corp. initiated settlement discussions involving class claims across the country. I was one of four Co-Lead Counsel for the plaintiffs' classes involved in those settlement discussions.

4. The settlement discussions took place over a period of months, involving face to face meetings in Washington, D.C., Chicago and San Francisco. In addition to negotiations with Fairbanks, Co-Lead Counsel had numerous discussions with the Federal Trade Commission, which was also investigating Fairbanks, in an attempt to coordinate any relief for the class.

5. These settlement discussions involved the production of data from Fairbanks and the analysis by outside accountants of Fairbanks' financial position as well as an analysis of the potential size of class claims. Based on this analysis, Co-Lead Counsel, as well as the FTC, became convinced that Fairbanks could not fund a settlement that was greater than the \$55 Million that is contemplated here.

6. In addition to the monetary relief, Co-Lead Counsel focused on obtaining practice changes to Fairbanks' on-going servicing conduct. After extensive negotiations, Fairbanks agreed to the practice changes that are included in both the FTC Consent Decree and

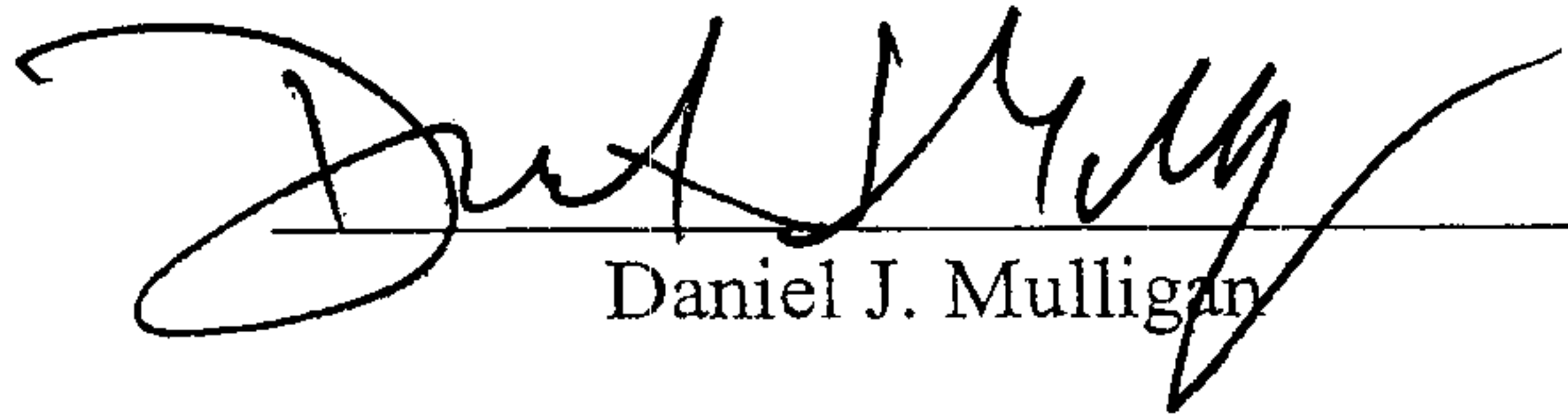
the settlement agreement with the class claimants. In my opinion, the practice changes will significantly adjust Fairbanks' practices, so as to make the servicing operation much more "consumer friendly" and much less likely to allow for any of the servicing abuses that are the subject of the numerous class action complaints involved in this settlement. In my opinion, the settlement reached here was the best possible under the circumstances.

7. The total amount of attorneys' fees that Fairbanks was willing to pay was also negotiated by Co-lead Counsel. These negotiations did not take place until after the essential terms of the class relief had been finalized.

8. No incentives of any kind, other than those described in the Settlement Agreement, were offered or will be paid to any counsel or class member.

Declared under penalty of perjury under the laws of the United States at San Francisco, California.

Dated: December 2, 2003

  
Daniel J. Mulligan

LIBW/1088652.3

# Jenkins & Mulligan

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Jenkins & Mulligan is a two-attorney consumer law firm which focuses almost exclusively on abuses that affect large numbers of the general public and have widespread social impact. The firm divides its efforts among three areas: litigation, advocacy and education.

**Litigation** The firm has substantial experience in prosecuting class action lawsuits in the areas of home-equity lending, foreclosures, title insurance, loan servicing and overall consumer protection. When law enforcement and regulatory agencies refused to take action against a notorious San Jose home-equity lender, the firm waged a six-year lawsuit that eventually put the consumer finance company out of business and provided substantial benefits to present and former borrowers. The firm has waged several actions in the foreclosure arena that challenged the payment of kickbacks for the referral of foreclosure business in California. In addition to these class matters, the firm has prosecuted individual claims on a limited basis, including actions for elder abuse and cases under the Truth-in-Lending Act as well as enforcement actions under state lending laws. The firm has also assisted federal agencies, the California Attorney General and various district attorneys by analyzing and advising on various actions involving lending and foreclosure practices. The firm has taken the lead in numerous high profile cases involving predatory lending, including *FTC v. First Alliance Mortgage Company*, at the time the largest settlement of consumer claims in FTC history; *Austin v. Lehman Brothers*, the first case seeking to recover damages from Wall Street for the funding of a predatory lender; and *Whiteside v. Lonestar*, the first case challenging outsourcing practices in the foreclosure industry. The firm is also co-counsel in pending nationwide litigation against Citigroup and Household Finance.

**Advocacy** The firm's principals have assisted in the writing of bills and have testified in support of consumer legislation in Sacramento and Washington, D.C., particularly in the foreclosure and home-equity lending areas. The lawyers have drafted bills that were presented by California state senators and have organized and testified on behalf of these bills in Sacramento. Mr. Jenkins also arranged for and participated in testimony before the United States Senate Banking Committee which later adopted the Home Ownership and Equity Protection requirements under the Truth-in-Lending Act. The principals are founding members of the National Association of Consumer Advocates, a Boston-based outgrowth of the National Consumer Law Center.



**Education** The principals have given numerous seminars to consumers and other consumer advocates, including a 3 ½-hour program to over 135 volunteer attorneys on home equity loan scams. The firm has assisted Legal Aid for the Elderly in San Francisco and Alameda counties by presenting seminars and helping to develop outreach programs to the elderly in an effort to prevent mortgage and home improvement fraud. Jenkins & Mulligan have also prepared video presentations for training of attorneys in foreclosure and lending practices, utilized by counsel around the state, and participated in trainings for Bay Area Legal Aid, the San Francisco, Santa Clara, San Mateo and Contra Costa County Bar Associations. Mr. Mulligan has been a speaker on predatory lending and foreclosure practices at numerous conferences.

### **Awards**

*ABA Pro Bono Publico Award* – In 1999, the American Bar Association awarded Jenkins & Mulligan its national award for public service, the first small firm entity to ever receive this accolade

*Outstanding Volunteer in Public Service* – Bar Association of San Francisco, 1995; awarded to both principals of the firm.

*Outstanding Senior Advocate* for 1994 – awarded to Mr. Mulligan by State Senator Milton Marks.

*Public Service Award* – Bar Association of San Mateo county; awarded to both principals of the firm in 1996.

*Outstanding Volunteer in Public Service* – Bar Association of San Francisco, 1998; awarded to both principals of the firm.

*Outstanding Volunteer in Public Service* – Bar Association of San Francisco, 1999; awarded to both principals of the firm.

*Outstanding Volunteer in Public Service* – Bar Association of San Francisco, 2000; awarded to both principals of the firm.

*Outstanding Volunteer in Public Service* – Bar Association of San Francisco, 2001; awarded to both principals of the firm.

*Justice Philanthropist Award* - Bar Association of San Francisco; awarded to the firm for providing funding and access for low income persons.

Certificate of Service

I, John Roddy, hereby certify that on this 3rd day of December, 2003, I served the foregoing documents by causing a true and correct copy to be sent overnight by First Class Mail to the following:

Thomas M. Hefferon  
Goodwin Procter, LLP  
1717 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

  
\_\_\_\_\_  
John Roddy

Certificate of Service

I, John Roddy, hereby certify that on this 2<sup>nd</sup> day of December, 2003, I served the foregoing documents by causing a true and correct copy to be sent via electronic mail to the following:

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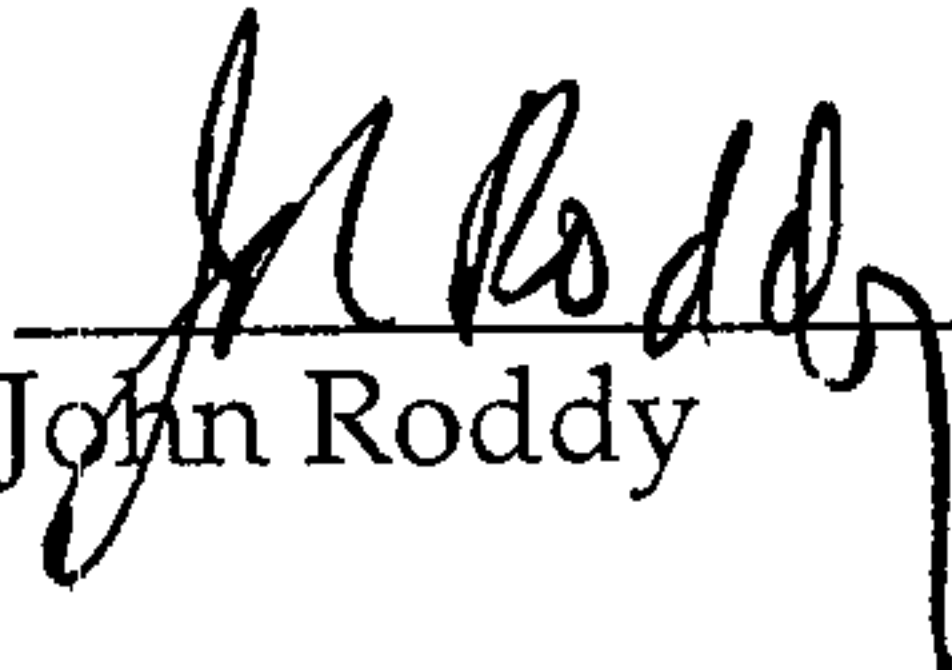
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