

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
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Attorneys for Plaintiff,

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**HEATHER MAXIN,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

RHG & COMPANY, INC.,

Defendant.

Case No.: 16-cv-2625-JLS-BLM

**DECLARATION OF JOSHUA B.
SWIGART IN SUPPORT OF
PLAINTIFF HEATHER MAXIN'S
MOTION FOR ATTORNEYS' FEES
AND COSTS**

DATE: February 15, 2018

TIME: 1:30 p.m.

COURTROOM: 4D

HON. JANIS L. SAMMARTINO

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1 I, JOSHUA B. SWIGART, declare as follows:

- 2 1. I am one of the attorneys for Plaintiff HEATHER MAXIN (“Maxin”) in this
- 3 action.
- 4 2. I am over the age of 18 and am fully competent to make this declaration.
- 5 3. I am a member in good standing of the bars of the State of California,
- 6 Washington, District of Columbia and Michigan. I am also admitted in every
- 7 federal district in California and have handled federal litigation in
- 8 Washington, Arizona, Minnesota, Tennessee and Texas.
- 9 4. If called as a witness, I would competently testify to the matters herein from
- 10 personal knowledge. The declaration is based upon my personal knowledge,
- 11 except where expressly noted otherwise.
- 12 5. I submit this declaration in support of the Plaintiffs’ motion for fees and costs
- 13 and final approval of class action settlement.
- 14 6. This action, which was originally filed on October 21, 2016, was taken on a
- 15 contingency fee basis.
- 16 7. I have been preliminarily approved as Class Counsel in this matter.
- 17 8. I have incurred 39.3 hours in connection with this action, which time records
- 18 were carefully reviewed. Specifically, I have incurred hours reviewing
- 19 documents, analyzing data produced by Defendant, communicating with
- 20 opposing counsel, communicating with co-counsel on related matters,
- 21 preparing for hearings, preparing for and participating in depositions, motion
- 22 practice, and a significant amount of time participating in mediations as well
- 23 as extensive pre-litigation investigation.
- 24 9. I am not seeking recovery of fees for hours incurred by paralegals working
- 25 at Hyde & Swigart on this action.
- 26

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1 10. I believe that the Parties are fully apprised of the relative strengths and
2 weaknesses of each other’s claims and defenses and the potential risks to each
3 party of pursuing further litigation in this matter, especially following
4 mediation.

5 11. I continue to be unaware of any conflict of interest between Plaintiff and any
6 settlement class member or between Plaintiff and Plaintiff’s attorneys.

7 **CLASS COUNSEL’S EXPERIENCE**

8 12. Since my admission to the State Bar of California in 2003, I have been
9 engaged exclusively in the area of consumer rights litigation, primarily in the
10 area of fair debt collections, the defense of debt collection lawsuits, class
11 action litigation under the Telephone Consumer Protection Act, California’s
12 invasion of privacy statutes pursuant to Penal Code § 630, *et seq.*, and false
13 advertising actions concerning consumer products.

14 13. The hourly rate that I am seeking in this action is \$625, which I believe is
15 reasonable.

16 14. I was also approved for an hourly rate of \$625 in *Hooker, Jr., et al. v. Sirius*
17 *XM Radio, Inc.*, 13-cv-003 (E.D. Va. May 11, 2017).

18 15. I was also approved for an hourly rate of \$605 in *Oxina v. Lands’ End, Inc.*,
19 Case No. 3:14-cv-02577-MMA-NLS (United States District Court, Southern
20 District of California; Dec. 2, 2016); *Abdeljalil v. GE Capital Retail Bank*,
21 No. 3:12-cv-02078-JAH-MDD (S.D. Cal. Dec. 22, 2016); and, *Medeiros v.*
22 *HSBC Card Servs.*, 2017 U.S. Dist. LEXIS 178484, at *38 (C.D. Cal. Oct.
23 23, 2017) (Approving \$605 hourly rate).

24 16. My firm, Hyde & Swigart, in which I am a principal, has litigated over 1,200
25 cases in the past 13 years. My firm has several offices, including in San
26 Diego, California; Riverside, California; Phoenix, Arizona; Boulder,

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1 Colorado; Minneapolis, Minnesota; Dallas, Texas; and Las Vegas, Nevada.

2 17. My firm has a history of aggressive, successful prosecution of consumer class
3 actions.

4 **HYDE & SWIGART’S**
5 **CONSUMER RELATED EXPERIENCE AND RESULTS**

6 18. Hyde & Swigart has extensive experience in consumer related issues. A brief
7 summary of a non-inclusive list of notable decisions are as follows:

8 a. *Knell v. FIA Card Services, N.A., et al.*, 12-CV-426 AJB(WVG)(S.D. Cal.
9 2014) (Co-lead counsel on a California class action involving privacy
10 rights under Cal. Penal Code § 632 et seq. Class relief provided for a
11 common fund in the amount of \$2,750,000. Counsel obtained final
12 approval on August 15, 2014);

13 b. *Hoffman v. Bank of America, N.A.*, 12-CV-539 JAH(DHB) (S.D. Cal.
14 2014) (Co-lead counsel on a California class action involving privacy
15 rights under Cal. Penal Code § 632 et seq. Class relief provided for a
16 common fund in the amount of \$2,600,000. Finally approved on November
17 6, 2014);

18 c. *Zaw v. Nelnet Business Solutions, Inc., et al.*, C 13-05788 RS (N.D. Cal.
19 2014) (Co-lead counsel on a California class action involving privacy
20 rights under Cal. Penal Code § 632 et seq. Class relief provided for a
21 common fund in the amount of \$1,188,110. Final approval granted on
22 December 1, 2014);

23 d. *CashCall, Inc. v. Superior Court*, 159 Cal. App. 273 (2008) (Allowing the
24 original plaintiff who lacked standing in a class action to conduct pre-
25 certification discovery of the identities of potential plaintiffs with
26 standing);

- 1 e. *Kight v. CashCall, Inc.*, 200 Cal. App. 4th 1377 (2011) (Co-lead counsel
2 on a class action involving privacy rights under Cal. Penal Code § 632 et
3 seq. Appeals court reversing the trial courts granting of Defendant's
4 motion for summary judgment after case was certified);
- 5 f. *Engelen v. Erin Capital Management, LLC, et al.*, No. 12-55039 (9th Cir.
6 2013, not for publication, D.C. No.: 3:10-cv-01125-BEN-RBB)
7 (Reversing the lower court's granting of summary judgment to the
8 defendant debt collector on the basis of the bona fide error defense and
9 remanding for further proceedings);
- 10 g. *Sherman v. Yahoo!, Inc.*, 2014 U.S. Dist. LEXIS 13286; 13-CV-0041-
11 GPC-WVG (S.D. Cal.) (TCPA class action where Defendant's motion for
12 summary judgment was denied holding that a single call or text message
13 with the use of an ATDS may be actionable under the TCPA);
- 14 h. *Olney v. Progressive Casualty Insurance Company*, 13-CV-2058-GPC-
15 NLS, 2014 U.S. Dist. LEXIS 9146 (S.D. Cal.) (Defendant's motion to
16 dismiss or in the alternative to strike the class allegations was denied
17 finding that debt collection calls were not exempt from coverage under the
18 TCPA);
- 19 i. *Iniguez v. The CBE Group, Inc.*, 13-CV-00843-JAM-AC, 2013 U.S. Dist.
20 LEXIS 127066 (E.D. Cal.) (The court denying Defendant's motion to
21 dismiss and to strike class allegations holding that the TCPA applies to any
22 call made to a cellular telephone with an ATDS);
- 23 j. *Catala v. Resurgent Capital Servs., L.P.*, 08-CV-2401 NLS, 2010 U.S.
24 Dist. LEXIS 63501 (S.D. Cal.) (Co-lead counsel on a class settlement
25 involving the Fair Debt Collection Practices Act);
- 26

- 1 k. *Hosseinzadeh v. M.R.S. Assocs.*, 387 F. Supp. 2d 1104 (C.D. Cal. 2005)
2 (Summary judgment was granted sua sponte in favor of a debtor where
3 debt collector violated the Fair Debt Collection Practices Act, when its
4 employees failed to disclose the debt collector’s identity and the nature of
5 its business in the messages left on the debtor’s answering machine). This
6 case has now been followed in at least four different districts throughout
7 the country.
- 8 l. *Edstrom v. All Servs. & Processing*, 2005 U.S. Dist. LEXIS 2773 (N.D.
9 Cal. 2005) (Numerous omissions from a letter sent by a debt collector to
10 members of a homeowners association, and a statement requiring any
11 dispute to be put in writing, violated 15 U.S.C. § 1692g(a) of the FDCPA
12 and Cal. Civ. Code §1788.17. The FDCPA required strict compliance;
13 actual confusion on debtors’ part was not required);
- 14 m. *Forsberg v. Fid. Nat’l Credit Servs.*, 2004 U.S. Dist. LEXIS 7622 (S.D.
15 Cal. 2004) (Plaintiff alleged sufficient facts to support his claim that a
16 collection company, in its initial communication, did not comply with the
17 statutory requirements for notice of validation of debts under the FDCPA);
- 18 n. *Sparrow v. Mazda Am. Credit*, 385 F. Supp. 2d 1063 (N.D. Cal. 2005)
19 (Court struck Defendant’s counter claim of the underlying debt in a fair
20 debt action based on lack of subject matter jurisdiction);
- 21 o. *Geoffroy, et al. v. Washington Mutual Bank*, 484 F. Supp. 2d 1115 (S.D.
22 Cal. 2007) (Court striking down Defendant’s arbitration agreement as both
23 procedurally and substantively unconscionable);
- 24 p. *Yang v. DTS Financial Group*, 07-CV-1731 JLS (WMc) (Holding that for
25 profit debt settlement companies are covered under the FDCPA and can be
26 construed as “debt collectors” under 15 U.S.C. § 1692a(6));

- 1 q. *Mason v. Creditanswers*, 2008 U.S. Dist. LEXIS 68575 (Holding that a
2 forum selection clause causing a California consumer to litigate its claims
3 seems contrary to the policies advanced by certain consumer protection
4 statutes);
- 5 r. *Myers v. LHR, Inc.*, 543 F.Supp.2d 1215 (2008) (Recognizing actual and
6 statutory damages in the amount of \$92,000 in a default judgment based
7 on violations of the State and Federal collection statutes);
- 8 s. *Yates v. Allied Intl Credit Corp.*, 578 F. Supp. 2d 1251 (2008) (Holding a
9 debtors claim based on the FDCPA stemming from the filing of a false
10 police report was not subject to the litigation privilege under Cal. Civ.
11 Code § 47(b));
- 12 t. *Owings v. Hunt & Henriques, et al.*, 2010 U.S. Dist. LEXIS 91819 (S.D.
13 Cal.) (Recognizing that the Service Members Civil Relief Act applies to
14 California National Guard Members and that the debt collection attorney's
15 false declaration the court violates the FDCPA);
- 16 u. *Heathman v. Portfolio Recovery Assocs., LLC*, 2013 U.S. Dist. LEXIS
17 98742 (S.D. Cal. 2013) (Holding that failing to properly list and disclose
18 the identify of the original creditor in a state collection pleading is a
19 violation of the Fair Debt Collection Practices Act under 15 U.S.C. §
20 1692e);
- 21 v. *Stemple v. QC Holdings, Inc.*, 12-cv-01997-BAS-WVG (S.D. Cal. Nov. 7,
22 2016) (TCPA action finally approved for \$1,500,000);
- 23 w. *Abdeljalil v. GE Capital Retail Bank*, 12-cv-02078-JAH-MDD (S.D. al.)
24 (Class Certification granted and finally approved for \$7,000,000);
- 25
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- 1 i. Three-day National Consumer Law Center Conference; Portland, OR -
- 2 2008;
- 3 j. Speaker at a Three-day National Consumer Law Center Conference;
- 4 San Diego, CA - 2009;
- 5 k. Speaker ABA/JAG presentation to military service members and
- 6 counsel; MCRD, San Diego CA – 2010;
- 7 l. Speaker ABA teleconference on defending consumer credit card debt
- 8 and related issues; San Diego, CA – 2010;
- 9 m. Three-day National Consumer Law Center Conference; Seattle, WA -
- 10 2011;
- 11 n. Two-day FDCPA Mini-Conference; New Orleans; LA - 2012;
- 12 o. Two-day National Consumer Law Center Conference on the FDCPA;
- 13 Seattle, WA - 2012;
- 14 p. National Consumer Law Center Conference, National Convention;
- 15 Balitmore, MD - 2013;
- 16 q. Speaker ABA National Conference, Business Litigation Section;
- 17 Trends in Consumer Litigation; San Francisco, CA - 2013;
- 18 r. Speaker National Consumer Law Center; Nuts and Bolts of TCPA
- 19 Litigation; San Antonio, TX - 2014;
- 20 s. Speaker San Diego County Bar Association; Convergence of the
- 21 FDCPA and Consumer Bankruptcy; San Diego, CA - 2014;
- 22 t. Guest Speaker at California Western School of Law; Consumer Law
- 23 class - 2014;
- 24 u. 8th Annual Class Action Seminar; San Francisco, CA – 2014;
- 25 v. Speaker regarding class actions at the NCLC National Conference held
- 26 in Anaheim, CA in 2016.

