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9 Frederick C. Anderson

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11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF KERN - UNLIMITED**

13 **FREDERICK C. ANDERSON,**  
14 **INDIVIDUALLY AND ON**  
15 **BEHALF OF ALL OTHERS**  
16 **SIMILARLY SITUATED,**

17 Plaintiff,

18 v.

19 **PHOENIX FINANCIAL**  
20 **SERVICES, LLC; AND,**  
21 **PENDRICK CAPITAL**  
22 **PARTNERS II, LLC,**

23 Defendants.

**ELECTRONICALLY FILED**  
1/2/2018 2:50 PM  
Kern County Superior Court  
Terry McNally  
By Gracie Goodson, Deputy

Case No.: BCV-16-101385

**DECLARATION OF JOSHUA B.**  
**SWIGART IN SUPPORT OF**  
**PLAINTIFF FREDERICK C.**  
**ANDERSON MOTION FOR**  
**PRELIMINARY APPROVAL OF**  
**CLASS ACTION SETTLEMENT**

**DATE:** February 20, 2018  
**TIME:** 8:30 a.m.

**HON. SIDNEY P. CHAPIN**

**DECLARATION OF JOSHUA B. SWIGART, ESQ.**

I, JOSHUA B. SWIGART, declare:

1. I am one of the attorneys for the Plaintiff FREDERICK C. ANDERSON (“Anderson”) in this action.
2. I submit this declaration in support of the Motion for Preliminary Approval of the Class Action Settlement in the action against Defendants PHOENIX FINANCIAL SERVICES, LLC and PENDRICK CAPITAL PARTNERS II, LLC (“DEFENDANTS”).
3. I am licensed to practice law before all California Federal Courts; and, all California State Courts.
4. If called as a witness, I would competently testify to the matters herein from personal knowledge.
5. The declaration is based upon my personal knowledge, except where expressly noted otherwise.
6. I incorporate the explanation of this class action as discussed in the Declaration of Abbas Kazerounian herein.

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

7. Since my admission to the State Bar of California in 2003, I have been engaged exclusively in the area of consumer rights litigation, primarily in the area of fair debt collections, the defense of debt collection lawsuits, class action litigation under the Telephone Consumer Protection Act, California’s invasion of privacy statutes pursuant to Penal Code § 630, *et seq.*, and false advertising actions concerning consumer products.
8. Hyde & Swigart has extensive experience in consumer related issues. A brief summary of a non-inclusive list of notable decisions are as follows:

- 1 a. *Knell v. FIA Card Services, N.A., et al.*, 12-CV-426 AJB(WVG)(S.D.  
2 Cal. 2014) (Co-lead counsel on a California class action involving  
3 privacy rights under Cal. Penal Code § 632 et seq. Class relief provided  
4 for a common fund in the amount of \$2,750,000. Counsel obtained final  
5 approval on August 15, 2014);
- 6 b. *Hoffman v. Bank of America, N.A.*, 12-CV-539 JAH(DHB) (S.D. Cal.  
7 2014) (Co-lead counsel on a California class action involving privacy  
8 rights under Cal. Penal Code § 632 et seq. Class relief provided for a  
9 common fund in the amount of \$2,600,000. Finally approved on  
10 November 6, 2014);
- 11 c. *Zaw v. Nelnet Business Solutions, Inc., et al.*, C 13-05788 RS (N.D. Cal.  
12 2014) (Co-lead counsel on a California class action involving privacy  
13 rights under Cal. Penal Code § 632 et seq. Class relief provided for a  
14 common fund in the amount of \$1,188,110. Final approval granted on  
15 December 1, 2014);
- 16 d. *CashCall, Inc. v. Superior Court*, 159 Cal. App. 273 (2008) (Allowing  
17 the original plaintiff who lacked standing in a class action to conduct pre-  
18 certification discovery of the identities of potential plaintiffs with  
19 standing);
- 20 e. *Kight v. CashCall, Inc.*, 200 Cal. App. 4th 1377 (2011) (Co-lead counsel  
21 on a class action involving privacy rights under Cal. Penal Code § 632 et  
22 seq. Appeals court reversing the trial courts granting of Defendant's  
23 motion for summary judgment after case was certified);
- 24 f. *Engelen v. Erin Capital Management, LLC, et al.*, No. 12-55039 (9th Cir.  
25 2013, not for publication, D.C. No.: 3:10-cv-01125-BEN-RBB)  
26 (Reversing the lower court's granting of summary judgment to the  
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1 defendant debt collector on the basis of the bona fide error defense and  
2 remanding for further proceedings);

3 g. *Sherman v. Yahoo!, Inc.*, 2014 U.S. Dist. LEXIS 13286; 13-CV-0041-  
4 GPC-WVG (S.D. Cal.) (TCPA class action where Defendant’s motion  
5 for summary judgment was denied holding that a single call or text  
6 message with the use of an ATDS may be actionable under the TCPA);

7 h. *Olney v. Progressive Casualty Insurance Company*, 13-CV-2058-GPC-  
8 NLS, 2014 U.S. Dist. LEXIS 9146 (S.D. Cal.) (Defendant’s motion to  
9 dismiss or in the alternative to strike the class allegations was denied  
10 finding that debt collection calls were not exempt from coverage under  
11 the TCPA);

12 i. *Iniguez v. The CBE Group, Inc.*, 13-CV-00843-JAM-AC, 2013 U.S. Dist.  
13 LEXIS 127066 (E.D. Cal.) (The court denying Defendant’s motion to  
14 dismiss and to strike class allegations holding that the TCPA applies to  
15 any call made to a cellular telephone with an ATDS);

16 j. *Catala v. Resurgent Capital Servs., L.P.*, 08-CV-2401 NLS, 2010 U.S.  
17 Dist. LEXIS 63501 (S.D. Cal.) (Co-lead counsel on a class settlement  
18 involving the Fair Debt Collection Practices Act);

19 k. *Hosseinzadeh v. M.R.S. Assocs.*, 387 F. Supp. 2d 1104 (C.D. Cal. 2005)  
20 (Summary judgment was granted sua sponte in favor of a debtor where  
21 debt collector violated the Fair Debt Collection Practices Act, when its  
22 employees failed to disclose the debt collector’s identity and the nature of  
23 its business in the messages left on the debtor’s answering machine).  
24 This case has now been followed in at least four different districts  
25 throughout the country.

- 1 l. *Edstrom v. All Servs. & Processing*, 2005 U.S. Dist. LEXIS 2773 (N.D.  
2 Cal. 2005) (Numerous omissions from a letter sent by a debt collector to  
3 members of a homeowners association, and a statement requiring any  
4 dispute to be put in writing, violated 15 U.S.C. § 1692g(a) of the FDCPA  
5 and Cal. Civ. Code §1788.17. The FDCPA required strict compliance;  
6 actual confusion on debtors’ part was not required);
- 7 m. *Forsberg v. Fid. Nat’l Credit Servs.*, 2004 U.S. Dist. LEXIS 7622 (S.D.  
8 Cal. 2004) (Plaintiff alleged sufficient facts to support his claim that a  
9 collection company, in its initial communication, did not comply with the  
10 statutory requirements for notice of validation of debts under the  
11 FDCPA);
- 12 n. *Sparrow v. Mazda Am. Credit*, 385 F. Supp. 2d 1063 (N.D. Cal. 2005)  
13 (Court struck Defendant’s counter claim of the underlying debt in a fair  
14 debt action based on lack of subject matter jurisdiction);
- 15 o. *Geoffroy, et al. v. Washington Mutual Bank*, 484 F. Supp. 2d 1115 (S.D.  
16 Cal. 2007) (Court striking down Defendant’s arbitration agreement as  
17 both procedurally and substantively unconscionable);
- 18 p. *Yang v. DTS Financial Group*, 07-CV-1731 JLS (WMc) (Holding that  
19 for profit debt settlement companies are covered under the FDCPA and  
20 can be construed as “debt collectors” under 15 U.S.C. § 1692a(6));
- 21 q. *Mason v. Creditanswers*, 2008 U.S. Dist. LEXIS 68575 (Holding that a  
22 forum selection clause causing a California consumer to litigate its claims  
23 seems contrary to the policies advanced by certain consumer protection  
24 statutes);
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- 1 r. *Myers v. LHR, Inc.*, 543 F.Supp.2d 1215 (2008) (Recognizing actual and  
2 statutory damages in the amount of \$92,000 in a default judgment based  
3 on violations of the State and Federal collection statutes);
- 4 s. *Yates v. Allied Intl Credit Corp.*, 578 F. Supp. 2d 1251 (2008) (Holding a  
5 debtors claim based on the FDCPA stemming from the filing of a false  
6 police report was not subject to the litigation privilege under Cal. Civ.  
7 Code § 47(b));
- 8 t. *Owings v. Hunt & Henriques, et al.*, 2010 U.S. Dist. LEXIS 91819 (S.D.  
9 Cal.) (Recognizing that the Service Members Civil Relief Act applies to  
10 California National Guard Members and that the debt collection  
11 attorney's false declaration the court violates the FDCPA);
- 12 u. *Heathman v. Portfolio Recovery Assocs., LLC*, 2013 U.S. Dist. LEXIS  
13 98742 (S.D. Cal. 2013) (Holding that failing to properly list and disclose  
14 the identify of the original creditor in a state collection pleading is a  
15 violation of the Fair Debt Collection Practices Act under 15 U.S.C. §  
16 1692e);
- 17 v. *Stemple v. QC Holdings, Inc.*, 12-cv-01997-BAS-WVG (S.D. Cal. Nov.  
18 7, 2016) (TCPA action finally approved for \$1,500,000);
- 19 w. *Abdeljalil v. GE Capital Retail Bank*, 12-cv-02078-JAH-MDD (S.D. al.)  
20 (Class Certification granted and finally approved for \$7,000,000);
- 21 x. *Caldera v. Am. Med. Collection Agency*, 2017 U.S. Dist. LEXIS 99239  
22 (C.D. Cal. June 27, 2017) (Order certifying nationwide TCPA class  
23 action);
- 24 y. *Burkhammer v. Allied Interstate, LLC*, 2017 Cal. Super. LEXIS 109  
25 (Sup. Ct. San Luis Obispo) (RFDCPA class action finally approved on  
26 October 30, 2017); and,
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1 z. *Moreno-Peralta v. TRS Recovery Services, Inc.*, 2017 Cal. Super. LEXIS  
2 548 (Sup. Ct. San Luis Obispo Oct. 10, 2017) (RFDCPA class action  
3 preliminarily approved).

4 **ADDITIONAL RELEVANT TRAINING,  
5 SPEAKING/TEACHING ENGAGEMENTS AND ASSOCIATIONS**

6 9. I have undergone extensive training in the area of consumer law. The following  
7 is a list of recent training conferences I attended:

- 8 a. National Consumer Law Conference; Oakland, CA – 2003;  
9 b. National Consumer Law Conference (FDCPA Mini-Conference);  
10 Kansas City, MO – 2004;  
11 c. National Consumer Law Conference; Boston, MA – 2004;  
12 d. Five-day extensive one-on-one training with The Barry Law Office;  
13 San Diego, CA –2005;  
14 e. Three-day FDCPA Mini-Conference; Minneapolis, MN – 2005;  
15 f. Four-day extensive one-on-one training with The Barry Law Office;  
16 Minneapolis, MN – 2005;  
17 g. Four-day National Association of Consumer Advocates Conference;  
18 Minneapolis, MN – 2005;  
19 h. Four-day National Consumer Law Center Conference; Nashville, TN  
20 –2008;  
21 i. Three-day National Consumer Law Center Conference; Portland, OR  
22 –2008;  
23 j. Speaker at a Three-day National Consumer Law Center Conference;  
24 San Diego, CA - 2009;  
25 k. Speaker ABA/JAG presentation to military service members and  
26 counsel; MCRD, San Diego CA – 2010;

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- l. Speaker ABA teleconference on defending consumer credit card debt and related issues; San Diego, CA – 2010;
- m. Three-day National Consumer Law Center Conference; Seattle, WA - 2011;
- n. Two-day FDCPA Mini-Conference; New Orleans; LA - 2012;
- o. Two-day National Consumer Law Center Conference on the FDCPA; Seattle, WA - 2012;
- p. National Consumer Law Center Conference, National Convention; Balitmore, MD - 2013;
- q. Speaker ABA National Conference, Business Litigation Section; Trends in Consumer Litigation; San Francisco, CA - 2013;
- r. Speaker National Consumer Law Center; Nuts and Bolts of TCPA Litigation; San Antonio, TX - 2014;
- s. Speaker San Diego County Bar Association; Convergence of the FDCPA and Consumer Bankruptcy; San Diego, CA - 2014;
- t. Guest Speaker at California Western School of Law; Consumer Law class - 2014;
- u. 8th Annual Class Action Seminar; San Francisco, CA – 2014;
- v. Speaker regarding class actions at the NCLC National Conference held in Anaheim, CA in 2016.

10.I am a member in good standing of the following local and national associations:

- a. National Association of Consumer Advocates;
- b. Federal Bar Association, Southern District of California Chapter;
- c. San Diego County Bar Association;
- d. Riverside County Bar Association;



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- e. San Bernardino County Bar Association;
- f. Enright Inns of Court (2011-2014);
- g. American Association for Justice.

11. Based upon the above, I believe my experience in litigating class actions and my years in practice are sufficient to justify my firm's appointment as class counsel in this case.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct, and that this declaration was executed on January 2, 2018.

BY: \_\_\_\_\_



JOSHUA B. SWIGART, ESQ.