

Declaration of Scott Z. Zimmermann

I, Scott Z. Zimmermann, declare:

1. I am an attorney duly licensed to practice by the State Bar of California and am a member of the General Bar of this Court. From the inception of this case through April 1, 2016, I was co-lead counsel, with Darryl Cordero of Payne & Fears LLP, representing the named plaintiff Craftwood Lumber Company (“Craftwood”) and the putative class. The facts stated in this declaration are of my own personal knowledge and, if called and sworn as a witness, I could and would competently testify with respect thereto.

2. This declaration addresses my background and experience handling complex litigation (including class actions for violations of the federal anti-junk fax law), my decision to undertake the case on a contingency basis, and the time I spent on the case and expenses related to the case that I incurred.

Legal Background and Experience in Junk Fax Class Actions

3. I am a 1977 graduate of the UCLA School of Law. Upon graduation, I clerked for the Honorable Clarke E. Stephens, Justice of the California Court of Appeal, for one year.

4. After my clerkship with Justice Stephens, in 1978, I joined the well-regarded Los Angeles law firm of Pacht, Ross, Warne, Bernhardt & Sears. I was made a partner of the Pacht, Ross firm in 1984, in the minimum amount of time for an associate to make partner. Later, I founded two law firms. I am currently a solo practitioner.

5. Since 1978, my law practice has focused on complex business litigation. I have handled these types of cases in state and federal trial and appellate courts and in arbitration, in nearly every substantive area except for anti-trust and family law.

6. I have handled numerous class actions, including defending companies in wage and hour class actions and in unfair business practice actions. I have also handled class action type cases for plaintiffs. In one such case, I represented all California horse owners who race horses at California race tracks. I obtained a judgment, affirmed on appeal, awarding California horse owners millions of dollars of interest on their race track money accounts, reversing decades-old practices whereby race tracks used such money as their own.

7. Since 1999, I handled plaintiff class actions involving the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), amended in 2005 by the Junk Fax Prevention Act of 2005 (“JFPA”). I have extensively studied and am intimately familiar with and knowledgeable about the TCPA/JFPA, the orders and regulations by the Federal Communications Commission under the Act, and the leading judicial decisions regarding the Act.

8. I had the privilege of representing the plaintiff class in a TCPA action entitled *Kaufman v. ACS Systems, Inc., et al.* The *Kaufman* case included a successful appeal by plaintiffs that resulted in a 2003 published opinion that can be found at 2 Cal. Rptr. 3d 296. The Court of Appeal decision in the *Kaufman* case is the leading TCPA case in California. The decision established a number of important precedents, including: (1) that no California enabling legislation is necessary to bring a private TCPA claim in a court of the state; (2) that a private TCPA case can be brought as a class action; (3) that the TCPA does not violate the First Amendment; and (4) that the TCPA does not impose a constitutionally excessive fine.

9. Upon remand, we successfully moved for class certification in the *Kaufman* case. After class certification was granted, the case was settled on a class-wide, claims-made basis. The *Kaufman* case involved 8,216 class members to whom defendants sent 13,919 fax transmissions. The defendants in *Kaufman* paid over \$4 million to settle the matter, and class members who submitted timely and valid claims were paid \$500 per fax transmission at issue.

10. Starting in 2006, Darryl Cordero of the Payne & Fears firm and I handled, as co-lead counsel, a series of TCPA/JFPA class actions, including: (1) a case involving nearly 100,000 class members settled on a class-wide, claims-made basis (while a motion for certification was pending) through the payment of over \$7.5 million by the defendants (*Gibson & Co. Ins. Brokers v. Quiznos Corp., et al.*, C.D. Cal., Case No. CV06-5849 PSG (PLAx)); (2) a case involving 24,000 class members settled on a class-wide, claims-made basis, through the payment of \$7.2 million by the defendants (*Universal Health Resources v. MDC Acquisition Co., et al.*, Los Angeles Superior Court, Case No. BC 415244); (3) a case involving 9,000 class members settled on a class-wide, claims-made basis for over \$10 million paid by one defendant on behalf of all defendants (*Craftwood II, Inc. v. TOMY International, Inc., et al.*, C.D. Cal., Case No. SACV12-1710 DOC (ANx)); (4) a case involving over 45,000 class members settled on a class-wide basis for \$40 million (at the time the largest dollar settlement of any junk fax case in the history of the TCPA/JFPA) (*Craftwood Lumber Co. v. Interline Brands*, N.D. Ill., Case No. 1:1-cv-04462); and (5) a case involving over 11,000 class members settled on a class-wide, claims-made basis for \$15 million (*Pines Nursing Home (77), Inc. v. PharMerica Corporation*, S.D. Fla., Case No. 12-23924-CIV-Moore/Mcaliley).

Decision to Undertake This Case on a Contingency Basis

11. With the approval and agreement of Craftwood and co-counsel, I rendered services and incurred expenses on this matter on a contingency basis. I considered whether to undertake this case on a contingency basis very carefully because of the inherent risks of contingency cases and specific risks of this case, particularly since economic consequences of an unsuccessful result in the case would significantly impact me as a solo practitioner and because I anticipated that the case would be time consuming and expensive to prosecute. Without the prospect of a contingency fee recovery (*i.e.*, a premium over lodestar) to compensate for the risks assumed, I would not have undertaken this case.

Time Spent and Expenses Incurred on the Case

12. From inception through March 18, 2016, I spent at least 153.9 hours on the case calculated through my billing system. I kept track of the tasks I performed and the amount of the time such tasks took to perform on my billing system. I recorded the tasks and the time spent on an ongoing basis as the case progressed. I made these entries (as well as cost entries) in the ordinary course of business, as I would on any other case that I handle. For purposes of the division of fee awards *inter se*, Mr. Cordero and I agreed that each of our hours would be valued at the same hourly rate. In the fee application in the aforementioned *Interline* case (prepared by Mr. Cordero), my time for lodestar cross-check purposes was valued at \$710 per hour. I believe the time that I spent on the case was necessary and appropriate to properly represent Craftwood and the class and benefitted Craftwood and the class (as well as co-counsel). My activities in the case included:

- Pre-filing investigation of the case, including retention and consultation with a bankruptcy consultant regarding the bankruptcy filing by defendant's predecessor;

- Preparation of the complaint filed in the action;
- Preparation of protective motions for class certification and to enter and continue the same;
- Review and analysis of the Answer and Amended Answer filed by defendant and preparation of memoranda regarding the same;
- Attendance at and participation in the rule 26(f) conference in the case and preparation of a report to the Court regarding the same;
- Preparation of a motion for protective order re confidentiality and review of the Court's order granting the same;
- Preparation of plaintiff's initial rule 26(a) disclosures and review and analysis of defendant's initial rule 26(a) disclosures;
- Preparation of written discovery to defendant and review and analysis of defendant's responses and supplemental responses to the written discovery and review and analysis of documents produced by defendant;
- Numerous meet and confer efforts regarding deficiencies in defendant's discovery responses;
- Consultation with a fax technology expert retained by plaintiff;
- Preparation of the opposition to defendant's motion to stay;

- Consultation with an FCC expert regarding defendant's petition for waiver filed with the FCC and preparation of opposition to defendant's petition;
- Review of FCC order granting waiver to defendant and preparation of an application asking FCC to set aside the waiver granted to defendant, review of defendant's opposition and preparation of a reply thereto;
- Preparation of deposition notice to defendant;
- Attendance at the December 9, 2014 status hearing and monitor other Court hearings and consult with Mr. Cordero about them;
- Preparation of reports filed with the Court;
- Review and analysis of orders entered by the Court ; and
- Communications with co-counsel and with defendant's counsel regarding settlement and mediation.

13. I incurred expenses related to this case totaling at least \$5,394. I recorded these expenses on my billing system on an ongoing basis as the case progressed. These expenses are described a report generated from my billing system attached as Exhibit A hereto. I believe that these expenses were necessary and appropriate to properly represent Craftwood and the class and benefitted Craftwood and the class (as well as co-counsel). These expenses primarily included: filing fee; fees of aforementioned bankruptcy consultant; travel related costs in connection with attending the December 9, 2014 status hearing in this case; fees of the aforementioned FCC consultant; and mediation fees.

I declare under penalty of perjury that the foregoing is true and correct. Executed April 2, 2017, at Kamuela, Hawaii.

s/ Scott Z. Zimmermann*
Scott Z. Zimmermann

*Mr. Zimmermann has approved Payne & Fears LLP filing this declaration without his signature. He will provide a signed version shortly

EXHIBIT A

Law Offices Of Scott Z. Zimmermann

777 S. Figueroa Street, Suite 4000
Los Angeles, CA 90017
(213) 452-6501

April 3, 2017

Senco

In Reference To: Senco Fax Case
Invoice # 5070

Additional Charges :

	<u>Amount</u>
3/25/2014 Consultation on bankruptcy issues (Askenaizer)	970.80
9/5/2014 Filing Fees-Complaint	400.00
9/9/2014 Attorney Services--Service of Initial Pleadings	66.00
12/8/2014 Attend Status Conference; Airfare (\$143.15); Hotel (\$107.15); Taxis to ORD and home (\$18.33); taxi to and from Court (\$19); per diem (\$37.50)	325.13
1/28/2015 Askenaizer Fee for Review Senco Products BK Filings	172.50
3/18/2015 Parking for 3/18 re Settlement	25.20
9/10/2015 Pro-rata portion of \$1,250 Shainis Retainer Deposit	312.50
12/9/2015 Prorata of Shainis Billing in Sept. and Oct. on FCC work (after retainer)	1,262.50
1/4/2016 1/2 Shainis Nov. Time Invoice	109.37
2/18/2016 1/2 Plaintiff's Fee for 4-6-16 Mediation	1,750.00
Total additional charges	<hr/> \$5,394.00