

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of the)
)
Rules and Regulations Implementing)
) **CG Docket No. 02-278**
the Telephone Consumer Protection)
)
Act of 1991)

Comments of Joe Shields on the Petition

For Expedited Declaratory Ruling of 3G Collect

I want to thank the Commission for providing the opportunity to comment on the Commission’s Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991. Specifically, the Commission seeks comments on the 3G Collect petition for an expedited declaratory ruling holding that prerecorded messages to cell phones that attempt to set up a collect a call are exempt from the TCPA’s regulation of automated calls to cell phones. I had thought that the 3rd party prior express consent exemption petition request was the most ludicrous I have ever seen. This petition now takes that dubious honor. The petitioner seeks an exemption for prerecorded message “collect calls” to cell phones. It is laughable to suggest that prerecorded message “collect calls” to cell phones are or should be exempt from the TCPA.

Prerecorded Message Calls to Cell Phones

The TCPA unambiguously regulates prerecorded message calls to cell phones. The TCPA prohibits prerecorded message calls to cell phones without prior express consent from the called party or an emergency purpose. The petition does not offer any viable reason why the Commission should create in its regulations an exemption which does not exist in the TCPA.

I personally have received many prerecorded message collect calls from prisons to my land line. Most if not all were made without my knowing who was responsible for the prerecorded message calls. The prerecorded message calls never provide the identity of the entity actually making the prerecorded message call and caller ID merely provided the jail pay phone number and county or city jail name. Even though I hung up on the calls occasionally I would get several of the prerecorded message calls from the same jail. The point here is that if these prerecorded message calls had been made to my cell number I would have paid for the prerecorded message calls **prior to accepting or declining the collect call** and, more importantly, I would not have been able to stop the calls.

The purpose and history of the TCPA indicate that Congressional intent was to prohibit the use of autodialers to communicate with others in a manner that would be an invasion of privacy and force a cost on a recipient of the communication unless the recipient of the communication provided prior express consent.

Petitioner is seeking an exemption from the TCPA's requirement for prior express consent of the called party for autodialed prerecorded messages to cell phones. There is no such exemption in the TCPA and the Commission has not been empowered to create one.

The TCPA Regulates All Auto Dialed Calls to Cell Phones

The petitioner claims the TCPA regulates only telemarketing calls. Petitioner is trying to obfuscate the intent of the TCPA. The TCPA regulates **all** autodialed calls to cell phones. Simply because the calls are a precursor to a collect call does not lessen the

cost to the recipients or lessen the invasion of privacy caused by the automated message calls to cell phones.

The true intent of the TPCA is to address ATDS calls no matter the purpose of the call. The “T” in TCPA stands for “telephone” and not “telemarketing”. The commentor attempts to obfuscate the true intent of the TCPA – to address ATDS calls no matter the purpose of the call. **IT IS NOT** the **Telemarketing** Consumer Protection Act. **IT IS** the **Telephone** Consumer Protection Act which does not draw a distinction between automated telemarketing, informational, survey, political or collect calls to cellular telephone numbers.

Petitioner Is Not an Operator or Common Carrier

Petitioner supports its petition by claiming it is an operator service provider. The argument fails on its face. Operator assistance is commonly used by someone seeking to find the number of an individual or business. Or one hears a message from an operator service provider that the number is not in service. Here we are dealing with prerecorded message calls received on cell phones without prior express consent of the called party. Under no circumstances is the petitioner providing common carrier operator services.

Petitioner seeks “common carrier” status and claims it merely assists in making prerecorded message calls to cell phones. Assisting in initiating prerecorded messages does not fall under the purveyance of a common carrier. Nor has petitioner registered any telecommunications services with the Commission or any state telecommunications agency. Therefore petitioner does not merit any common carrier status. The Commission should note here that one commentor, AT&T, will consider initiating prerecorded

messages that attempt to set up a collect call without the prior express consent of the called party if the petition is granted.

Cell Phone Directories Are Easily Available

Petitioner claims there is no generally available directory of cell phone numbers. Petitioner misrepresents the fact that there are several sources to identify cell numbers. For example NeuStar has a useful service for recognizing and scrubbing wireless numbers that have been “ported” from landlines. Additionally, the Direct Marketing Association provides an easy to use “Wireless Block Identifier¹”. There are many other such scrubbing services available to the petitioner. Consequently, petitioner has no excuse for allowing anyone to use its automated dialing equipment to dial cell numbers and deliver a prerecorded message.

It should be noted here that 3G Collect explicitly uses a cell phone number identification service: “1-800-COLLECT calls to Wireless and VOIP* Numbers: 1-800-COLLECT has contracted with **3G Collect** to offer a collect service to wireless and VOIP* numbers in the North American Dialing Plan(NADP), the U.S., Canada, U.S. Virgin Island, Puerto Rico, Guam, and part of Northern Mexico. Just dial 1-800-Collect and calls terminating to a wireless or VOIP* number can be transferred seamlessly to 3G Collect.”²

Prior Express Consent

Petitioner claims they should be entitled to a 3rd party consent defense. Petitioner suggests that it can be assumed that the called party gave consent to the caller. That assumption fails when the called party did not in fact give consent to the caller. The

¹ <http://www.ims-dm.com/products/wireless.shtml>

² http://www.1800collect.com/Publication1_files/TermsCond.htm

petitioner can avail themselves of the cell number scrubbing services and avoid making autodialed prerecorded message calls to cell phones without prior express consent.

What does the petitioner not understand about “...prior express consent **of the called party...**”³? It certainly is not ambiguous. There is nothing difficult to understand about “**...the called party...**” The petitioner cannot change the language of the statute which clearly states prior express consent must be obtained from “**...the called party...**”

The petitioner cannot delegate compliance with the TCPA to a 3rd party. "The rationale of the nondelegable duty rule is 'to assure that when a negligently caused harm occurs, the injured party will be compensated by the person whose activity caused the harm[.]' Thus, the nondelegable duty rule advances the same purposes as other forms of vicarious liability." (Srithong v. Total Investment Co. (1994) 23 Cal.App.4th 721, 727 [28 Cal.Rptr.2d 672], internal citations and footnote omitted.)

Prior express consent cannot be deemed to be given by the caller. Petitioner must obtain prior express consent from the called party. The Commission cannot rewrite the TCPA and create a 3rd party exemption for prior express consent.

Insulation from TCPA Claims

The petitioner is seeking insulation from proper and well founded TCPA claims. One wonders why the petitioner claims innocence in a class action claim yet does not identify the case so one can ascertain the true reason for the filing of the claim. The case the petitioner references is styled as Leimbach v. 3G Collect Inc. et al, Case No. 3:10-cv-01043-L-POR, US District Court, Southern District of California. It is clear that the called party in that case never provided prior express consent to anyone for the

³ 47 USC §227(b)(A) “...to make any call (other than a call made for emergency purposes or made with the **prior express consent of the called party**) using any automatic telephone dialing system...”

prerecorded message call to be made to her cell phone. To add insult to injury the petitioner proceeded with attempts to unlawfully collect for the call by transmitting text messages, again without prior express consent, to the victim of the petitioners automated prerecorded message call. The final outcome of the case was a dismissal order based on a settlement between the parties. Notably the order was signed on 10/17/2011 just 11 days before petitioner filed its present petition with the Commission.

CONCLUSION

The initiation of autodialed and/or prerecorded messages to cell numbers without prior express consent of the called party is prohibited by the TCPA. The intent was to protect the privacy of cell phone users and to prohibit forcing costs on cell phone users. The Commission cannot create an exemption that would cause an invasion of privacy or force costs on cell phone users.

Petitioner seeks to create a new exemption from the prior express consent of the called party or emergency purpose. The Commission cannot create an exemption not provided for in the TCPA.

Therefore the petition must be denied.

Respectfully submitted,

_____/s/_____

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FILED

10 MAY 14 PM 1:57

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

8 Attorneys for the Plaintiff

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

11 **HYDE & SWIGART**
San Diego, California

12 **Wendy Leimbach**, on behalf of
13 herself and all others similarly
14 situated

15 Plaintiffs,

16 v.

17 3G Collect Inc., d.b.a., 3G Collect,
18 L.L.C., 3G Collect, d.b.a.,
19 3GCollect.com, d.b.a. 1-877-3G-
20 Collect

Case Number:

10 CV 1043 L - POR
CLASS ACTION

21 **Complaint for Damages and**
22 **Injunctive Relief Pursuant To The**
23 **Telephone Consumer Protection**
24 **Act, 47 U.S.C § 227 et seq.**

25 **Jury Trial Demanded**

26 **INTRODUCTION**

- 27 1. Wendy Leimbach ("Plaintiff") brings this class action for damages, injunctive
28 relief, and any other available legal or equitable remedies, resulting from the
illegal actions of 3G Collect Inc., d.b.a., 3G Collect, L.L.C., 3G Collect,
d.b.a., 3GCollect.com, d.b.a. 1-877-3G-Collect, (collectively, the
"Defendant"), in negligently, knowingly, and/or willfully contacting Plaintiff
on Plaintiff's cellular telephone, in violation of the Telephone Consumer

ORIGINAL

1 Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), and the Rosenthal Fair
2 Debt Collection Practices Act, Cal. Civ. Code §§ 1788-1788.32, thereby
3 invading Plaintiff’s privacy and causing her damages. Plaintiff alleges as
4 follows upon personal knowledge as to himself and her own acts and
5 experiences, and, as to all other matters, upon information and belief,
6 including investigation conducted by her attorneys.

7
8 **JURISDICTION AND VENUE**

9 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks up
10 to \$1,500 in damages for each call in violation of the TCPA, which, when
11 aggregated among a proposed class number in the tens of thousands, exceeds
12 the \$5,000,000 threshold for federal court jurisdiction. Additionally, Plaintiff
13 seeks up to \$1,000 in damages for Defendant’s violation of the RFDCPA,
14 which, when aggregated among a proposed class number in the tens of
15 thousands, exceeds the \$5,000,000 threshold for federal court jurisdiction.
16 Further, Plaintiff alleges a national class, which will result in at least one class
17 member belonging to a different state than that of Defendant. Therefore, both
18 elements of diversity jurisdiction under the Class Action Fairness Act of 2005
19 (“CAFA”) are present, and this Court has jurisdiction.

20 3. Venue is proper in the United States District Court for the Southern District of
21 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because the events
22 giving rise to Plaintiff’s causes of action against Defendant occurred within
23 the State of California and the County of San Diego.

24
25 **PARTIES**

26 4. Plaintiff is, and at all times mentioned herein was, an individual citizen and
27 resident of the State of California, and a resident of the County of San Diego.
28

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- 1 5. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47
2 U.S.C. § 153 (10).
- 3 6. Plaintiff is a natural person from whom a debt collector sought to collect a
4 consumer debt which was due and owing or alleged to be due and owing from
5 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §
6 1788.2(h).
- 7 7. Plaintiff is informed and believed, and thereon alleges, that Defendant is, and
8 at all times mentioned herein was, a New York Corporation whose primary
9 corporate address is located in New York. Defendant is, and at all times
10 mentioned herein was, a corporation and a “person,” as defined by 47 U.S.C.
11 § 153 (10). Plaintiff is informed and believes, and thereon alleges, that at all
12 times relevant Defendant conducted business in the State of California and in
13 the County of San Diego.
- 14 8. Because Defendant is a natural person, partnership, corporation, limited
15 liability company, trust, estate, cooperative, association or other similar entity,
16 Defendant was a “person” as that term is defined by Cal. Civ. Code §
17 1788.2(g).
- 18 9. Defendant, in the ordinary course of business, regularly, on behalf of himself,
19 herself, or others, engages in debt collection as that term is defined by
20 California Civil Code § 1788.2(b), is therefore a debt collector as that term is
21 defined by California Civil Code § 1788.2(c).

22
23 **FACTUAL ALLEGATIONS**

24 ***Defendant’s Initial Call Featuring A Pre-Recorded Voice***

- 25 10. At some time in or around November 2009, but prior to the filing of this
26 Complaint, Defendant contacted Plaintiff’s cellular telephone in an attempt to
27 place a collect call.
28

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- 1 11. Plaintiff is informed and believes, and thereon alleges, that during this
2 telephone call, Defendant used “an artificial or prerecorded voice” as
3 prohibited by 47 U.S.C. § 227 (b)(1)(A).
- 4 12. Plaintiff is informed and believes, and thereon alleges, that the telephone
5 number Defendant called was assigned to a cellular telephone service for
6 which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227
7 (b)(1).
- 8 13. Plaintiff is informed and believes, and thereon alleges, that these telephone
9 calls constituted calls that were not for emergency purposes as defined by 47
10 U.S.C. § 227 (b)(1)(A)(i).
- 11 14. Plaintiff is informed and believes, and thereon alleges, that Plaintiff did not
12 provide express consent to receive calls on Plaintiff’s cellular telephone,
13 pursuant to 47 U.S.C. § 227 (b)(1)(A).
- 14 15. Plaintiff did not provide “express consent” allowing Defendant to place
15 telephone calls to Plaintiff’s cellular phone with an artificial or prerecorded
16 voice as proscribed under 47 U.S.C. § 227(b)(1)(A).
- 17 16. These telephone calls by Defendant were in violation of 47 U.S.C. § 227(b)
18 (1).

19 ***Defendant’s Subsequent Collection Efforts***

- 20 17. Subsequent to the placement of the subject collect call, Defendant proceeded
21 to charge Plaintiff \$12.99 for receiving such call.
- 22 18. Because this alleged debt was money, property or their equivalent which was
23 due or owing or alleged to be due or owing from a natural person to another
24 person, the alleged debt was a “debt” as that term is defined by Cal. Civ. Code
25 § 1788.2(d).
- 26 19. Subsequent to the placement of the subject collect call, Defendant engaged in
27 multiple efforts to collect the above-referenced amount.
28

- 1 20. Plaintiff is informed and believes, and thereon alleges, that on multiple
2 occasions over numerous days, all prior to the date this Complaint was filed,
3 but sometime after in and after November 2009, Defendant contacted Plaintiff
4 on Plaintiff's cellular telephone via an "automatic telephone dialing system,"
5 as defined by 47 U.S.C. § 227 (a)(1), in an attempt to collect upon the above-
6 referenced amount.
- 7 21. Specifically, Defendant used text calls, including short message service
8 (SMS), or text message, calls. The TCPA's prohibition on autodialed calls
9 encompasses both voice calls and text calls to wireless numbers. Defendant
10 either made the text message call to Plaintiff's cellular telephone using an
11 automatic telephone dialing system, or contracted with another entity to make
12 said call using an automatic telephone dialing system.
- 13 22. Plaintiff is informed and believes, and thereon alleges, that these telephone
14 calls constituted calls that were not for emergency purposes as defined by 47
15 U.S.C. § 227 (b)(1)(A)(i).
- 16 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff did not
17 provide express consent to receive calls on Plaintiff's cellular telephone,
18 pursuant to 47 U.S.C. § 227 (b)(1)(A).
- 19 24. These telephone calls by Defendant were in violation of 47 U.S.C. § 227(b)
20 (1).
- 21 25. Because Defendant engaged in an act or practice in connection with the
22 collection of consumer debt this act or practice was a "debt collection" as that
23 term is defined by Cal. Civ. Code § 1788.2(b).
- 24 26. On several occasions, Defendant sent these text messages in an attempt to
25 collect a debt after 9 p.m. pacific standard time, or before 8 a.m. pacific
26 standard time.
- 27 27. Without the prior consent of the consumer given directly to the Defendant or
28 the express permission of a court of competent jurisdiction, Defendant

- 1 d. All persons within the United States who received a text call, including
2 short message service (SMS), or text message calls, (collectively, Text
3 Message”) made through the use of any automatic telephone dialing
4 system, within the four years prior to the filing of this Complaint
5 (“Subclass Three”).
- 6 e. All persons within the United States who received a text call, including
7 short message service (SMS), or text message calls (collectively, Text
8 Message”), made through the use of any automatic telephone dialing
9 system, and were billed for receiving such a Text Message within the
10 four years prior to the filing of this Complaint (“Subclass Four”).
- 11 f. All persons within the State of California who receive a text call,
12 including short message service (SMS), or text message calls
13 (collectively, “Text Message”), in an attempt to collect an an alleged
14 debt due and owing resulting from a previously received collect call,
15 after 9 p.m. pacific standard time, or before 8 a.m. pacific standard
16 time (“Subclass Five,” or the “California Class”).
- 17 30. Plaintiff represents, and is a member of, The Class, and Subclasses One, Two,
18 Three, Four, and Five because Plaintiff received telephone calls and Text
19 Messages from Defendant to Plaintiff’s cellular telephone made through the
20 use of both an automatic telephone dialing system and an artificial or
21 prerecorded voice, after 9 p.m. pacific standard time, and before 8 a.m.
22 pacific standard time, for which Plaintiff was billed for receiving such calls.
- 23 31. Defendant, its employees and agents are excluded from The Classes.
24 Plaintiff does not know the number of members in The Classes, but believes
25 The Classes’ Members number in the tens of thousands, if not more. Thus,
26 this matter should be certified as a Class action to assist in the expeditious
27 litigation of this matter.
28

- 1 32. Plaintiff and members of The Classes were harmed by the acts of Defendant
2 in at least the following ways: Defendant illegally contacted Plaintiff, and
3 unlawfully attempted to collect a debt from Plaintiff, and Class and Subclass
4 members via their cellular telephones thereby causing Plaintiff and Class and
5 Subclass members to incur certain cellular telephone charges or reduce
6 cellular telephone time for which Plaintiff and Class and Subclass members
7 previously paid, by having to retrieve or administer messages left by
8 Defendant during those illegal calls, and invading the privacy of said Plaintiff
9 and Class and Subclass members. Plaintiff and The Classes and Subclass
10 were damaged thereby.
- 11 33. This suit seeks only damages and injunctive relief for recovery of economic
12 injury on behalf of The Class and Subclass and it expressly is not intended to
13 request any recovery for personal injury and claims related thereto. Plaintiff
14 reserves the right to expand The Class and Subclass definitions to seek
15 recovery on behalf of additional persons as warranted as facts are learned in
16 further investigation and discovery.
- 17 34. The joinder of The Classes' members is impractical and the disposition of
18 their claims in the Class action will provide substantial benefits both to the
19 parties and to the court. The Classes can be identified through Defendant's
20 records.
- 21 35. There is a well-defined community of interest in the questions of law and fact
22 involved affecting the parties to be represented. The questions of law and fact
23 to The Classes predominate over questions which may affect individual Class
24 and Subclass members, including, but not limited to, the following:
- 25 a. Whether, within the four years prior to the filing of this
26 Complaint, Defendant made any call (other than a call made for
27 emergency purposes or made with the prior express consent of
28 the called party) to a Class member using any automatic

1 telephone dialing system or an artificial or prerecorded voice to
2 any telephone number assigned to a cellular telephone service.

3 c. Whether Plaintiff and The Classes were damaged thereby, and
4 the extent of damages for such violation;

5 d. Whether Defendant should be enjoined from engaging in such
6 conduct in the future;

7 e. Whether Defendant's conduct violates the TCPA; and

8 f. Whether Defendant's conduct violates the RFDCPA

9 36. As a person that received numerous calls using an automatic telephone dialing
10 system or an artificial or prerecorded voice, without Plaintiff's express prior
11 consent, after 9 p.m. p.m. pacific standard time, Plaintiff is asserting claims
12 that are typical of The Classes. Plaintiff will fairly and adequately represent
13 and protect the interests of The Classes in that Plaintiff has no interests
14 antagonistic to any member of The Classes

15 37. Plaintiff and the members of The Classes have all suffered irreparable harm as
16 a result of the Defendant's unlawful and wrongful conduct. Absent a class
17 action, The Classes will continue to face the potential for irreparable harm. In
18 addition, these violations of law will be allowed to proceed without remedy,
19 and Defendant will likely continue such illegal conduct. Because of the size
20 of the individual Class and Subclass member's claims, few, if any, Class and
21 Subclass members could afford to seek legal redress for the wrongs
22 complained of herein.

23 38. Plaintiff has retained counsel experienced in handling class action claims and
24 claims involving violations of the Telephone Consumer Protection Act and the
25 Rosenthal Fair Debt Collection Practices Act.

26 39. A class action is a superior method for the fair and efficient adjudication of
27 this controversy. Class-wide damages are essential to induce Defendant to
28 comply with federal and California law. The interest of Class members in

1 individually controlling the prosecution of separate claims against Defendant
2 is small because the maximum statutory damages in an individual action for
3 violation of privacy are minimal. Management of these claims is likely to
4 present significantly fewer difficulties than those presented in many class
5 claims.

6 40. Defendant has acted on grounds generally applicable to The Classes, thereby
7 making appropriate final injunctive relief and corresponding declaratory relief
8 with respect to the Class and Subclass as a whole.

9
10 **FIRST CAUSE OF ACTION**

11 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
12 **47 U.S.C. § 227 ET SEQ.**

13 41. Plaintiff incorporates by reference all of the above paragraphs of this
14 Complaint as though fully stated herein.

15 42. The foregoing acts and omissions of Defendant constitute numerous and
16 multiple negligent violations of the TCPA, including but not limited to each
17 and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

18 43. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*,
19 Plaintiff and the Class and Subclass Members are entitled to an award of
20 \$500.00 in statutory damages, for each and every violation, pursuant to 47
21 U.S.C. § 227(b)(3)(B).

22 44. Plaintiff and the Class and Subclass Members are also entitled to and seek
23 injunctive relief prohibiting such conduct in the future.

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SECOND CAUSE OF ACTION

**KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

- 45. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
- 46. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*
- 47. As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and each of the Class and Subclass Members are entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- 48. Plaintiff and the Class and Subclass Members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

**ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA)
CAL. CIV. CODE §§ 1788-1788.32**

- 49. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
- 50. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA, including but not limited to each and every one of the above-cited provisions of the RFDCPA, Cal. Civ. Code §§ 1788-1788.32
- 51. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00

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1 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney’s fees and
2 costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.
3

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The
6 Class and Subclass Members the following relief against Defendant:
7

8 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
9 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 10 • As a result of Defendant’s negligent violations of 47 U.S.C. §
11 227(b)(1), Plaintiff seeks for himself and each Class and Subclass
12 Member \$500.00 in statutory damages, for each and every
13 violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- 14 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
15 such conduct in the future.

16 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION**
17 **OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 18 • As a result of Defendant’s willful and/or knowing violations of 47
19 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class and
20 Subclass Member treble damages, as provided by statute, up to
21 \$1,500.00 for each and every violation, pursuant to 47 U.S.C. §
22 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- 23 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
24 such conduct in the future.

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THIRD CAUSE OF ACTION

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA)

- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney’s fees, pursuant to Cal. Civ. Code § 1788.30(c).

TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Date: May 11, 2010

Hyde & Swigart

By: 
 Joshua B. Swigart
 Attorneys for Plaintiff

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San Diego, California

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Court Name: USDC California Southern
Division: 3
Receipt Number: CAS013552
Cashier ID: mbain
Transaction Date: 05/14/2010
Payer Name: HYDE AND SWIGART

CIVIL FILING FEE

For: LEIMBACH V 3G COLLECT
Case/Party: D-CAS-3-10-CV-001043-001
Amount: \$350.00

CHECK

Check/Money Order Num: 3865
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.