

1 Abbas Kazerounian #48522
ak@kazlg.com
2 **Kazerouni Law Group, APC**
3 245 Fischer Ave., Suite D1
Costa Mesa, CA 92626
4 P: (800) 400-6808
5 F: (800) 520-5523

Boyd McFadden Mayo #43752
mack@bmayolaw.com
Mayo Law Group
922 S Cowley Street, Suite 6
Spokane, WA 99202
Telephone: (509) 381-5091
Facsimile: (509) 241-0834

6 Ryan L. McBride #50751
7 ryan@kazlg.com
8 **Kazerouni Law Group, APC**
9 2633 E. Indian School Road, Ste. 460
Phoenix, AZ 85016
Telephone: (800) 400-6808
10 Facsimile: (800) 520-5523
11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE EASTERN DISTRICT OF WASHINGTON**

14 **Nathan Hofstader and Richard**
15 **Cerenzia, individually and on**
behalf of others similarly situated,

16 **Plaintiffs,**

17 **v.**

18 **Emergency Physician Services, P.S.**
19 **Providence Holy Family Hospital,**
20 **Sacred Heart Medical Center, and**
21 **Providence Health and Services,**

22 **Defendants.**

Case No.: 2:18-cv-00062-SMJ

DECLARATION OF BOYD M.
MAYO IN SUPPORT OF:

(1) FINAL APPROVAL OF
CLASS ACTION
SETTLEMENT

(2) AWARD OF ATTORNEYS’
FEEES, COSTS AND SERVICE
AWARDS;

DATE: February 9, 2021

TIME: 1:30 p.m.

CRTRM: 755

JUDGE: Hon. Salvador J. Mendoza

DECLARATION OF BOYD M. MAYO

I, Boyd M. Mayo, hereby declare under penalty of perjury that the following is true and correct:

1. I have personal knowledge of the following facts and, if called as a witness, would testify as follows.
2. I am one of the Plaintiffs’ co-counsel in this action and make this declaration in support of Plaintiff’s Motion for Final Approval and Motion for Attorney’s Fees, Costs, and Service Awards.
3. Class Counsel completed a significant amount of work on this case, which resulted in a successful class settlement as described herein and in the Motion for Final Approval. If requested, Class Counsel will provide a detailed time record of all of the hours spent on this case.

Procedural History

4. Plaintiffs filed their initial Complaint on February 20, 2018.
5. Defendant filed an Answer on March 23, 2018.
6. Plaintiff and Defendant then participated in substantial discovery including written discovery and conferring regarding responses.
7. The Parties subsequently participated in two settlement conferences led by Judge John T. Rodgers. After the second settlement conference, the parties came to an agreement.

Plaintiffs Hofstader and Cerenzia’s Involvement

8. In addition to lending their name to this matter, and thus subjecting themselves to public attention, Plaintiffs Nathan Hofstader and Richard Cerenzia (jointly as “Plaintiffs”) have actively engaged in this action. Plaintiffs have spent hours engaged in this action, which includes time spent in pre-litigation investigation, reviewing the complaint, assisting with initial disclosures, assisting with written discovery, reviewing motions, Plaintiff

1 Hofstader attending his own deposition, Plaintiffs attending both settlement
2 conferences, reviewing and signing settlement documents, and
3 communicating with Plaintiffs' counsel throughout the litigation.

4 9. Based on their participation, Plaintiffs request \$2,500 each for an incentive
5 award to be paid separately from the attorneys fees and costs.

6 **Class Settlement**

7 10. Based on the facts of this case, I believe this settlement is fair, reasonable,
8 and adequate; and among other things, the Settlement will avoid costly and
9 time-consuming litigation and the need for trial.

10 11. In considering the Settlement, Plaintiffs, my co-counsel, and I carefully
11 balanced the risks of continuing to engage in protracted and contentious
12 litigation against the benefits to the Settlement Class, including the
13 stipulated change in policies, and believe that the injunctive relief
14 settlement is in the best interests of the Settlement Class Members

15 12. I believe that under the circumstances the proposed Settlement is fair,
16 reasonable, and adequate, and is in the best interests of the Class Members.

17 13. I have not been contacted by any of the Attorneys General concerning this
18 proposed Settlement

19 **Boyd M. Mayo's Legal Practice**

20 14. I have engaged in a diverse practice for nearly ten years. For the first five
21 years of practice, my practice area was virtually exclusively the litigation of
22 consumer law and consumer protection. Over the past five years, I have
23 engaged in a more diverse practice, with approximately fifty percent of
24 which engaged in consumer protection litigation (unfair and deceptive
25 business practices, lemon law and warranty litigation, UCC claims, debt
26 adjusting act violations, credit repair violations, and collections act
27 violations), as well class other practice areas, including landlord-tenant law,
28

1 corporate and business law, hospitality law, nonprofit entities law, startup
2 law, and mergers and acquisitions.

3 15.I have litigated dozens of cases over my career and currently represent more
4 than 85 businesses and institutions in Washington State as the general
5 outside counsel.

6 16.In the event that I represent consumers on a contingency fee, funding all
7 litigation costs, and usually waiting a considerable amount of time before
8 being paid for services.

9 17.I am licensed in Washington and Idaho (pending).

10 18.I regularly manage and supervise other associates and staff within our firm,
11 assigning projects and giving advice.

12 19.My practice is substantially devoted to consumer rights and the litigation of
13 consumer statutes including the Washington Consumer Protection Act.

14 20.Plaintiffs' counsel's hourly rates include many factors beyond personal
15 compensation, including non-billed office personnel, equipment, insurance,
16 research materials, office and other overhead expenses. Consumer rights
17 litigation inevitably involves large corporations, which have the capacity to
18 bring enormous resources to bear that individual consumers are simply
19 unable to meet on their own.

20 21.Hospitals vigorously resist settling cases. If plaintiffs attorneys are not
21 compensated at a rate that allows them to maintain the technological – as
22 well as intellectual and professional resources – to match corporate
23 defendants' exhaustive resources, consumers simply cannot prevail. Few
24 attorneys have the means and ability to take these cases, and if those that do
25 so are not compensated at a rate that allows them the chance of prevailing on
26 behalf of consumers, these cases will not be brought, and the remedial
27 purpose of this legislation will fail.

28 22.Unfortunately, there are very few attorneys who regularly represent

1 plaintiffs in cases involving consumer rights. This is most likely due to the
2 specialized and complex nature of the statute and case law and due to the
3 relative financial resources of the respective parties, whereby the consumer
4 is often forced to “match resources” with the defendant and litigate his or her
5 rights up to – and sometimes through – trial.

6 23. The average consumer does not have funds to litigate this type of case.
7 Therefore, in further justification of our fees, I note that we take such cases
8 (this case included) on a contingency fee basis, advance all litigation costs
9 and do not charge the consumer one penny up front. If the case is lost, we
10 do not get paid. This alone would justify a fee rate well in excess of the fees
11 we charge for doing hourly work.

12 24. My fees are based on my experience, our proficiency, and winning track
13 record.

14 25. In the last ten years, I have represented consumers, corporations, and
15 associations, charging them hourly for my services. For my services I
16 charged, and my clients agreed to pay, \$200 to \$400.00 for my work.

17 26. I have been involved in the following cases, in which various hourly rates
18 were approved:

- 19 • *Carlsen v. Global Client Solutions, LLC, et al.*, U.S. District
20 Court, Eastern District of Washington, Cause No. CV-09-246-
21 LRS. This action resulted in the landmark opinion, *Carlsen v.*
22 *Global Client Solutions, LLC*, 171 Wn.2d 486, 256 P.3d 321
23 (2011), which first interpreted key provisions of Washington’s
24 Debt Adjusting Act and declared that act applicable to business
25 practices of modern-day debt settlement companies. This case
26 ultimately resolved itself through class settlement and was given
27 final approval by Judge Lonny R. Suko on June 5, 2012.
- 28 • *Carlsen v. Freedom Debt Relief*, U.S. District Court, Eastern
District of Washington, Cause No. CV-09-055-LRS. This action
resulted in certification of questions to the Washington Supreme
Court regarding key provisions of Washington’s Debt Adjusting
Act. The action resolved itself through class settlement on the

1 eve of the hearing before the Washington Supreme Court. The
2 class settlement was given final approval by Judge Lonny R.
Suko on July 13, 2011.

- 3
- 4 • *Wheeler v. NoteWorld, LLC, et al.*, U.S. District Court, Eastern
5 District of Washington, Cause No. CV-10-202-LRS. This action
6 was resolved as to a primary defendant through class settlement
7 approved by Judge Lonny R. Suko on March 20, 2012. The
8 class settlement as to the final defendant was given final
9 approval by Judge Lonny R. Suko January 7, 2014.
 - 10 • *Johnson v. James Wojcik, et al.*, Spokane County Superior Court,
11 Cause No. 09-2-03638-6. This action resulted in an order of
12 summary judgment and judgment in favor of the Washington
13 class.
 - 14 • *Parkinson v. Freedom Fidelity Management, Inc., et al.*, U.S.
15 District Court, Eastern District of Washington, Cause No. CV-
16 10-345-TOR. This action was certified as a class action by
17 Judge Robert H. Whaley on January 10, 2012. This action
18 resulted in an Order of default and default judgment by the Court
19 in favor of the Washington class.
 - 20 • *Bronzich v. Persels & Associates, LLC, et al.*, U.S. District
21 Court, Eastern District of Washington, Cause No. 10-00364-
22 TOR. This case ultimately resolved itself through class
23 settlement and was given final approval by the Honorable
24 Thomas O. Rice on January 25, 2013.
 - 25 • *Smith v. Legal Helpers Debt Resolution, LLC, et al.*, U.S.
26 District Court, Western District of Washington, Cause No. 11-
27 CV-05054-RJB. This case ultimately resolved itself through
28 class settlement and was given final approval by the Court on
December 7, 2012.
 - *Callow v. CDS Client Services, Inc., et al.*, King County Superior
Court, Cause No. 11-2-21818-0 KNT. This case ultimately
resolved itself through class settlement and was given final
approval by the Court on March 26, 2013.
 - *Brown v. Consumer Law Associates, LLC, et al.*, U.S. District
Court, Eastern District of Washington, Cause No. 11-CV-0194-
TOR. This case ultimately resolved itself through class

1 settlement and was given final approval by the Court on May 23,
2 2013.

3 • *Harrod v. Belmont Media, LLC, et al.*, Spokane County Superior
4 Court, Cause No. 12-2-00935-4. This case ultimately resolved
5 itself through class settlement and was given final approval by
6 the Court on May 22, 2013.

7 • *Madden v. Century Negotiations, Inc., et al.*, King County
8 Superior Court, Cause No. 11-2-41757-3. This case was
9 certified as a class action on December 7, 2012 and ultimately
10 resolved itself through class Settlement. The case was given final
11 approval by the Court on July 26, 2013.

12 • *Goucher v. Debt Pay Gateway, Inc., et al.*, King County Superior
13 Court, Cause No. 12-2-18759-2-SEA. This case ultimately
14 resolved itself through class settlement and was given final
15 approval by the Court on May 10, 2013.

16 • *Derrickson v. Quality Support Services, LLC, et al.*, Spokane
17 County Superior Court, Cause No. 12-2-00537-5. This case
18 ultimately resolved itself through class settlement and was given
19 final approval by the Court on June 14, 2013.

20 • *Atkar v. Pollock*, Spokane County Superior Court, Cause No.
21 12-2-01149-9. This case ultimately resolved itself through class
22 settlement and was given preliminary approval on March 8,
23 2013. This case ultimately resolved itself through class
24 settlement and was given final approval by the Court on August
25 16, 2013.

26 • *Casselberry v. Bay View Law Group et al.*, U.S. District Court,
27 Eastern District of Washington, Cause No. CV-11-00395-TOR.
28 This case reached a class settlement as to Defendant EFA
Processing, LP and was given preliminary approval on March 4,
2013. The case also reached a settlement with regard to
Defendants Bay View Law Group, Jedediah Thurkettle,
Management Resources of America and Robert Ainsworth. The
Court granted preliminary approval of the settlement with those
Defendants on March 27, 2013. The case was given final
approval by the Court, as to all defendants, on July 26, 2013.

- 1 • *Petchoom v. Global Debt Management, LLC, et al.*, King County Superior Court, Cause No. 12-2-16686-2 SEA. This case reached a class settlement as to all Defendants and was given preliminary approval on January 9, 2014. The case was given final approval by the Court, as to all defendants, on April 25, 2014.
- 2
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- 4
- 5 • *Mikelson and Leedy v. J. Hass Group, LLC, et al.*, Pierce County Superior Court, Cause No. 12-2-05948-4. This case reached a class settlement as to all Defendants and was given preliminary approval on March 14, 2014. The case was given final approval by the Court, as to all defendants, on August 15, 2014.
- 6
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- 9 • *Heersink v. Fidelity Debt Solutions, LLC, et al.*, Pierce County Superior Court, Cause No. 13-2-10283-3. This case reached a class settlement as to all Defendants, was given preliminary approval on September 15, 2014, and was given final approval on January 9, 2015.
- 10
- 11
- 12

13 27.I, personally, was appointed class counsel or settlement class counsel in the
 14 above matters of *Atkar v. Pollock*, No. 12-2-01149-9; *Derrickson v. Quality*
 15 *Support Services*, No. 12-2-00537-5; *Mikelson v. J. Hass Group, LLC*, No.
 16 12-2-05948-4; and *Heersink v. Fidelity Debt Solutions, LLC*, No. 13-2-
 17 10283-3.

18 28.For seven straight years, I have been selected as a Top Lawyer in *Spokane*
 19 *Living Magazine*, one of Washington’s Best Lawyers by *Seattle-Met*
 20 *Magazine*, and a Washington State *Super Lawyer Rising Star* by Washington
 21 Law & Politics.

22 29.I am heavily involved in associations in my areas of Practice as well as the
 23 Washington State Bar Association. I am currently a Peer Advisor with the
 24 Washington State Lawyers’ Assistance Program to assist lawyers in the
 25 community battling alcohol and drug addiction; a member of the
 26 Washington Multifamily Housing Association (Eastern Washington
 27 Chapter); a member of the Landlord Association of the Inland Northwest; a
 28 member of the consumer protection and unfair business practices section of

1 the Washington State Bar Association; and a member of the Spokane
2 County, Washington State, and American Bar Associations.

3 30.I was previously a volunteer mentor with the Re-Start CPR Mentoring
4 Program, through which I provided guidance to recently released male
5 convictees as they re-entered society and battled the stigma of jail records
6 and addiction on their resumes. In connection with the Washington State
7 Association for Justice, I previously was the Vice Chair of the Consumer
8 Protection Committee and an Editorial Board member of “Trial News,” the
9 WSAJ’s monthly publication. In addition, I co-wrote the Washington State
10 Consumer Protection Litigation Deskbook.

11 31.I have been co-counsel or lead counsel in various cases resulting in
12 published opinions, including but not limited to the following:

- 13 • Larson v. State of Washington, 194 Wn. App. 722, 375 P.3d 1096
14 (Wash. App. 2016), review denied, 2016 Wash. LEXIS 1333
15 (Wash., Dec. 7, 2016): Obtained reversal and remand of defense
16 verdict on behalf of three wrongfully convicted individuals, where
17 trial court applied an erroneously high burden of proof and
18 misinterpreted key provisions of the newly enacted Wrongly
19 Convicted Persons Act. Obtained denial of State of Washington’s
20 Petition for a Writ of Certiorari to the Washington Supreme Court.
- 21 • Gandee v. LDL Freedom Enterprises, LLC, 176 Wn.2d 598 (2013):
22 Successfully obtained a unanimous Supreme Court decision
23 upholding the denial of Defendants’ motion to enforce an arbitration
24 clause on unconscionability grounds, distinguishing the United
25 States Supreme Court’s decision in AT&T Mobility v. Concepcion,
26 and upholding the right to sue in court for a class of disenfranchised
27 Washington consumers.

- 1 • *Gorden v. Lloyd Ward & Assocs.*, 323 P.3d 1074 (Wash. App.
2 2014): Co-counsel in a matter in which Division III of the
3 Washington Court of Appeals struck down an arbitration clause in a
4 debt settlement contract in a consumer class action.
- 5 • *Smith v. JEM Group, Inc.*, 737 F.3d 636 (9th Cir. 2013): Co-counsel
6 in a consumer class action striking down an arbitration agreement in
7 a Consumer Protection Act class action.
- 8 • *Carlsen v. Global Client Solutions, LLC*, 171 Wn.2d 486, 499
9 (2011): Co-counsel in briefing certified questions to the Washington
10 State Supreme Court on issues of first impression involving
11 interpretation of the Washington Debt Adjusting Act and its
12 applicability to the new evolution of the unsecured debt relief
13 industry.

14 32.I have been preliminarily approved as Class Counsel in this matter.

15 **Attorneys' Fees and Costs Incurred**

16 33.I respectfully submit that this firm utilized skill, careful and thorough
17 preparation and investigation through litigation to reach a favorable result
18 for the Plaintiff. After carefully reviewing my firms billing records, I
19 determined that the fees were reasonably incurred in litigating this case to a
20 successful resolution.

21 34.My co-counsel and I prosecuted the claims at issue efficiently and effectively,
22 making every effort to prevent the duplication of work that could have
23 resulted in having multiple law firms work on this case.

24 35.My co-counsel and I spent a significant amount of time negotiating the
25 Settlement in principle and then finalizing the actual terms of the Settlement
26 with Defendant.

27 36.I note that my co-counsel and my work has not yet been completed, as we
28 must still (1) prepare for and attend the final approval hearing set for

1 February 9, 2021 [Dkt. No. 51]; (2) disburse service awards and awards for
2 Plaintiffs' counsel's fees and expenses; and (3) reasonably monitor the
3 implementation of the implemented polices by Defendant following final
4 approval.

5 37.I billed 43.5 hours at a rate of \$350 per hour for work on this case for a total
6 of \$15,225.00.

7 38.The billing for my hours in this case was fair and reasonable based on the
8 novel and complex issues addressed over two and half years of litigation.

9 39.My office has incurred a total of \$.68 in costs for this entire action. That
10 amount includes postage costs. The only costs remaining to be determined
11 are travel costs for the Final Approval hearing. Class Counsel will be able to
12 provide an updated accounting at the Final Approval hearing if requested by
13 the Court.

14 40.The total amount of fees *and* costs Class Counsel seeks is **\$95,000**.

15 41.A copy of Mayo Law Group's Fees and Costs Report for the instant action
16 detailing all attorney's fees and costs incurred successfully litigating this
17 action through the date of Plaintiffs' Motion for Attorney's Fees and Costs is
18 available at Class Counsel's offices if the Court would like to look at the
19 time spent in further detail.

20
21 I declare under penalty of perjury under the laws of the State of Washington
22 that the foregoing is true and correct and that this declaration was signed on
23 November 9, 2020 in Spokane, Washington.

24
25 Dated: November 9, 2020

Respectfully submitted,

26 /s/ Boyd M. Mayo

27 Boyd M. Mayo
28 Attorney for Plaintiff