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 15 CLAY BLANKENSHIP

16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA—EASTERN DIVISION**

18 **CLAY BLANKENSHIP,**
 19 **INDIVIDUALLY AND ON**
 20 **BEHALF OF ALL OTHERS**
SIMILARLY SITUATED,

21 Plaintiff,

22 v.

23 **CLARK COUNTY COLLECTION**
 24 **SERVICE, LLC,**

25 Defendant.

Case No.:

CLASS ACTION

CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATION OF:

1. THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692 ET SEQ.; AND,

2. THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT, CAL. CIV. CODE § 1788, ET SEQ.

JURY TRIAL DEMANDED

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress enacted the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.
2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.
3. CLAY BLANKENSHIP ("Plaintiff") brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of CLARK COUNTY COLLECTION SERVICE, LLC ("Defendant") with regard to attempts by Defendant to unlawfully and abusively collect a debt allegedly owed by Plaintiff, in violation of the federal debt collection laws.

- 1 4. Plaintiff alleges as follows upon personal knowledge as to himself and his
2 own acts and experiences, and, as to all other matters, upon information and
3 belief, including investigation conducted by their attorneys.
- 4 5. Plaintiff makes these allegations on information and belief, with the
5 exception of those allegations that pertain to a plaintiff, or to a plaintiff's
6 counsel, which Plaintiff alleges on personal knowledge.
- 7 6. While many violations are described below with specificity, this Complaint
8 alleges violations of the statutes cited in their entirety.
- 9 7. Unless otherwise stated, Plaintiff alleges that any violations by Defendant
10 were knowing and intentional, and that Defendant did not maintain
11 procedures reasonably adapted to avoid any such violation.
- 12 8. Unless otherwise indicated, the use of Defendant in this Complaint includes
13 all agents, employees, officers, members, directors, heirs, successors,
14 assigns, principals, trustees, sureties, subrogees, representatives, and insurers
15 of Defendant.

16 JURISDICTION AND VENUE

- 17 9. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 and 15 U.S.C.
18 § 1692(k). In addition, jurisdiction also arises pursuant to 28 U.S.C. § 1367
19 for supplemental State claims.
- 20 10. This action arises out of Defendant's violations of (i) the Fair Debt
21 Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA"); and, (ii) the
22 Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, et seq.
- 23 11. Because Defendant does business within the State of California by
24 contacting California residents for purposes of debt collection, personal
25 jurisdiction is established.
- 26 12. Venue is proper in the United States District Court for the Central District of
27 California, Eastern Division pursuant to 28 U.S.C. § 1391(b)-(c) because
28 Plaintiff resides within the City of Murrieta, County of Riverside, and a

1 substantial part of the events giving rise to Plaintiff's claims occurred in this
2 district.

3 **PARTIES**

4 13. Plaintiff is a natural person who resides in the City of Murrieta, County of
5 Riverside, State of California.

6 14. Plaintiff is informed and believes, and thereon alleges, that Defendant is,
7 and at all times mentioned herein was, a corporation whose State of
8 Incorporation and principal place of business is in the City of Las Vegas,
9 County of Clark, State of Nevada, but avails itself of business within the
10 State of California by contacting California residents for purposes of debt
11 collection.

12 15. Plaintiff is obligated or allegedly obligated to pay a debt, and are
13 "consumer[s]" as that term is defined by 15 U.S.C. § 1692a(3).

14 16. Defendant uses an instrumentality of interstate commerce or the mails in a
15 business the principal purpose of which is the collection of debts, or who
16 regularly collects or attempts to collect, directly or indirectly, debts owed or
17 due or asserted to be owed or due another, and is therefore a debt collector
18 as that phrase is defined by 15 U.S.C. § 1692a(6).

19 17. Plaintiff is a natural person from whom a debt collector sought to collect a
20 consumer debt which was due and owing, or alleged to be due and owing,
21 from Plaintiff, and is a "debtor" as that term is defined by California Civil
22 Code § 1788.2(h).

23 18. Defendant, in the ordinary course of business, regularly, on behalf of itself or
24 others, engages in "debt collection" as that term is defined by California
25 Civil Code § 1788.2(b), and is therefore a "debt collector" as that term is
26 defined by California Civil Code § 1788.2(c).

27 **FACTUAL ALLEGATIONS**

28 19. At all times relevant, Plaintiff is an individual residing within the City of

1 Murrieta, County of Riverside, State of California.

2 20. At all times relevant, Defendant conducted business in the County of
3 Riverside, State of California.

4 21. Plaintiff is informed and believes, and thereon alleges, that the alleged debt
5 upon which Defendant was attempting to collect arose from medical services
6 that Plaintiff received from Sunrise Hospital for a broken nose that Plaintiff
7 sustained during a hockey game.

8 22. These alleged financial obligations were for personal, family or household
9 purposes, and therefore, a “debt” as that term is defined by 15 U.S.C. §
10 1692a(5).

11 23. These alleged finance obligations were money, property, or their equivalent,
12 which is due or owing, or alleged to be due or owing, from a natural person
13 to another person and were therefore “debt[s]” as that term is defined by
14 California Civil Code §1788.2(d), and a “consumer debt” as that term is
15 defined by California Civil Code §1788.2(f) and 15 U.S.C. § 1692a(6).

16 24. Sometime thereafter, Plaintiff allegedly defaulted upon the payments
17 allegedly owed, and Defendant was allegedly assigned, placed or otherwise
18 transferred, to Defendant for collection. Plaintiff currently takes no position
19 as to the validity of the alleged debt.

20 25. As a result, Plaintiff received numerous telephonic communications from
21 Defendant with regard to Plaintiff’s alleged debt. Said contacts constitute
22 “communications” as that term is defined by 15 U.S.C. § 1692a(2) and “debt
23 collection” as that phrase is defined by 15 U.S.C. § 1692a(6).

24 26. Specifically, on or about September 10, 2014, Defendant placed a telephone
25 call to the phone number associated on the medical records for CLAY
26 BLANKENSHIP.

27 27. During this phone call, Defendant informed CLAY BLANKENSHIP that it
28 was “Rachel from Clark County Collections” calling about a debt for

1 Sunrise Hospital.

2 28. CLAY BLANKENSHIP was misled into believing that a governmental
3 agency was calling him, which took him by surprise because there should
4 have been no reason for him to be contacted about money owed to a
5 governmental agency for Clark County.

6 29. Through this conduct, Defendant violated 15 U.S.C. § 1692e(1) by using a
7 name that would create in the mind of the least sophisticated consumer the
8 false representation or implication that Defendant is vouched for, bonded by,
9 or affiliated with the County of Clark, State of Nevada, which was intended
10 to scare Plaintiff into paying the debt. This section is incorporated into the
11 RFDCPA through Cal. Civ. Code § 1788.17; thus, Defendant also violated
12 Cal. Civ. Code § 1788.17.

13 30. Due to this confusion, Plaintiff did not feel comfortable identifying himself
14 as CLAY BLANKENSHIP and he therefore informed Rachel that they did
15 not have permission to call him, to which Rachel responded by claiming, “It
16 doesn’t matter if you’re Clay Blankenship or not, you still owe the debt.”

17 31. Through this conduct, Defendant violated 15 U.S.C. § 1692e(10) by using
18 deceptive means to collect Plaintiff’s alleged debt for the following: 1)
19 telling Plaintiff that it did not matter if he was Clay Blankenship he still
20 owed the debt, and 2) using a name that misled Plaintiff into believing he
21 was being contacted by a governmental agency. This section is incorporated
22 into the RFDCPA through Cal. Civ. Code § 1788.17; thus, Defendant also
23 violated Cal. Civ. Code § 1788.17.

24 32. Through this conduct, Defendant violated 15 U.S.C. § 1692f by using
25 unconscionable and unfair means in an attempt to collect the alleged debt
26 owed by Plaintiff for the following: 1) telling Plaintiff that it did not matter
27 if he was Clay Blankenship he still owed the debt, and 2) using a name that
28 misled Plaintiff into believing he was being contacted by a governmental

1 agency. This section is incorporated into the RFDCPA through Cal. Civ.
2 Code § 1788.17; thus, Defendant also violated Cal. Civ. Code § 1788.17.

3 33. Defendant thereafter failed to provide CLAY BLANKENSHIP with the
4 required notice within 5 days of the initial contact regarding the alleged debt,
5 which constitutes a violation of 15 U.S.C. § 1692g(a).

6 34. As described herein, Defendant engaged in conduct in violation of the
7 federal collection laws. Specifically, Defendant violated 15 U.S.C. §§
8 1692e(1); 1692e(10); & 1692f. In addition, Defendant also violated Cal.
9 Civ. Code § 1788.17.

10 **CLASS ALLEGATIONS**

11 35. Plaintiff brings this action on his own behalf, and on behalf of all others
12 similarly situated.

13 36. Plaintiff defines the FDCPA Class as:

14 All persons with addresses within the State of California
15 to whom Defendant placed telephone calls and misled
16 the alleged debtors into believing they were being
17 contacted by a governmental agency between the date of
18 the filing of this action and one year preceding, and was
19 attempting to collect an alleged medical debt, and failed
20 within 5 days of the initial communication to send
21 written notices as required under 15 U.S.C. § 1692g(a).

22 37. Similarly, Plaintiff defines the RFDCPA Class as:

23 All persons with addresses within the State of
24 California to whom Defendant placed telephone calls
25 and misled the alleged debtors into believing they were
26 being contacted by a governmental agency between the
27 date of the filing of this action and one year preceding,
28 and was attempting to collect an alleged medical debt.

38. The FDCPA Class and the RFDCPA Class shall be referred to jointly as

1 “The Classes.”

2 39. Defendant and its employees or agents are excluded from the Classes.

3 40. Plaintiff does not know the exact number of persons in the Classes, but
4 believe them to be in the several hundreds, if not thousands, making joinder
5 of all these actions impracticable.

6 41. The identity of the individual members is ascertainable through Defendant’s
7 and/or Defendant’s agents’ records or by public notice.

8 42. There is a well-defined community of interest in the questions of law and
9 fact involved affecting the members of the Classes. The questions of law
10 and fact common to the Classes predominate over questions affecting only
11 individual class members, and include, but are not limited to, the following:

- 12
- 13 a. Whether Defendant violated the FDCPA by placing phone calls to
14 alleged debtors that misled them into believing they were being
15 contacted by a governmental agency;
- 16
- 17 b. Whether Defendant violated the RFDCPA by placing phone calls to
18 alleged debtors that misled them into believing they were being
19 contacted by a governmental agency;
- 20
- 21 c. Whether Defendant violated the FDCPA by failing, within 5 days of
22 the initial communication initiated by Defendant or its agents, to
23 provide the required written notices to the Class members, as
24 required under 15 U.S.C. § 1692g(a);
- 25
- 26 d. Whether members of the Classes are entitled to the remedies under
27 the FDCPA;
- 28

- e. Whether members of the Classes are entitled to the remedies under the RFDCPA;
- f. Whether members of the Classes are entitled to declaratory relief;
- g. Whether members of the Classes are entitled to injunctive relief;
- h. Whether members of the Classes are entitled to an award of reasonable attorneys' fees and costs of suit pursuant to the RFDCPA;
- i. Whether members of the Classes are entitled to an award of reasonable attorneys' fees and costs of suit pursuant to the FDCPA; and,
- j. Whether Defendant can satisfy the bona fide error affirmative defense.

43.Plaintiff will fairly and adequately protect the interest of the Classes.

44.Plaintiff has retained counsel experienced in consumer class action litigation and in handling claims involving unlawful debt collection practices.

45.Plaintiff's claims are typical of the claims of the Classes, which all arise from the same operative facts involving unlawful collection practices.

46.A class action is a superior method for the fair and efficient adjudication of this controversy.

47.Class-wide damages are essential to induce Defendants to comply with the federal and State laws alleged in the Complaint.

48.The interests of class members in individually controlling the prosecution of separate claims against Defendants is small because the maximum statutory damages in an individual action under the FDCPA or RFDCPA is \$1,000. Management of these claims is likely to present significantly fewer

1 difficulties than those presented in many class claims, e.g., securities fraud.

2 49. Defendant has acted on grounds generally applicable to the Classes, thereby
3 making appropriate final declaratory relief with respect to the class as a
4 whole.

5 50. Plaintiff contemplates providing notice to the putative class members by
6 direct mail in the form of a postcard and via Internet website.

7 51. Plaintiff requests certification of a hybrid class combining the elements of
8 Fed. R. Civ. P. 23(b)(3) for monetary damages and Fed. R. Civ. P. 23(b)(2)
9 for equitable relief.

10 **COUNT I**

11 **VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**

12 **15 U.S.C. §§ 1692-1692(p) (FDCPA)**

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

15 53. The foregoing acts and omissions constitute numerous and multiple
16 violations of the FDCPA, such as the deceptive and unconscionable means
17 adopted by Defendant, pursuant to 15 U.S.C. §§ 1692e(1), 1692e(10), &
18 1692f, and for failure to send required written notice pursuant to 15 U.S.C. §
19 1692g(a).

20 54. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
21 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages
22 for a knowing or willful violation in the amount up to \$1,000.00 pursuant to
23 15 U.S.C. § 1692k(a)(2)(A); and reasonable attorney's fees and costs
24 pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

25 **COUNT II**

26 **VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

27 **Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)**

28 55. Plaintiff incorporates by reference all of the above paragraphs of this

1 Complaint as though fully stated herein.

2 56.The foregoing acts and omissions constitute numerous and multiple
3 violations of the RFDCPA.

4 57.As a result of each and every violation of the RFDCPA, Plaintiff is entitled
5 to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory
6 damages for a knowing or willful violation in the amount up to \$1,000.00
7 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney’s fees and
8 costs pursuant to Cal. Civ. Code § 1788.30(c) from each Defendant
9 individually.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant for:

- 12 • Certifying the Classes as requested herein;
- 13 • An award of actual damages, in an amount to be determined at trial,
14 pursuant to 15 U.S.C. § 1692k(a)(1), for each plaintiff and putative class
15 member;
- 16 • An award of actual damages, in an amount to be determined at trial,
17 pursuant to Cal. Civ. Code § 1788.30(a), for each plaintiff and putative
18 class member;
- 19 • An award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. §
20 1692k(a)(2)(A), for each plaintiff and putative class member;
- 21 • An award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code
22 § 1788.30(b), for each plaintiff and putative class member;
- 23 • An award of costs of litigation and reasonable attorney’s fees, pursuant
24 to Cal. Civ. Code § 1788.30(c);
- 25 • An award of costs of litigation and reasonable attorney’s fees, pursuant
26 to 15 U.S.C. § 1692k(a)(3); and
- 27 • Any and all other relief that this Court deems just and proper.

28 ///

TRIAL BY JURY

58.Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: October 17, 2014

Respectfully submitted,

HARTMAN LAW OFFICE, INC.

By: /s/ Jared M. Hartman
JARED M. HARTMAN, ESQ.
ATTORNEY FOR PLAINTIFF

[Additional counsel for Plaintiff]

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