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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

Daniel Schuchardt and Michelle) Case No.
Muggli, *on behalf of themselves and*)
others similarly situated,) PLAINTIFFS' CLASS ACTION
Plaintiff,) COMPLAINT
) JURY DEMANDED
vs.)
)
Law Office of Rory W. Clark, A)
Professional Law Corporation,)
)
Defendant.)

Nature of this Action

1. Daniel Schuchardt and Michelle Muggli (“Plaintiffs”) bring this class action against Law Office of Rory W. Clark, A Professional Law Corporation (“Defendant”) under the federal Fair Debt Collection Practices Act (“FDCPA”), 15

1 U.S.C. § 1692 *et seq.* and the Rosenthal Fair Debt Collection Practices Act
2 (“Rosenthal Act”), Cal. Civ. Code, §1788 *et seq.*

3 2. In particular, Plaintiffs allege that Defendant failed to properly provide
4 them with disclosures required by 15 U.S.C. § 1692g(a)(4), and that this failure
5 violates both the FDCPA and Rosenthal Act.
6

7 **Background**

8 3. Congress enacted the FDCPA in 1977 to “eliminate abusive debt
9 collection practices by debt collectors.” 15 U.S.C. § 1692(e).

10 4. It did so in response to “the use of abusive, deceptive, and unfair debt
11 collection practices by many debt collectors,” which contributes “to the number of
12 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of
13 individual privacy.” 15 U.S.C. § 1692(a).
14

15 5. Recently, the Consumer Financial Protection Bureau (“CFPB”)—the
16 federal agency tasked with enforcing the FDCPA—explained: “Harmful debt
17 collection practices remain a significant concern today. The CFPB receives more
18 consumer complaints about debt collection practices than about any other issue.”¹
19

20 6. Of these complaints about debt collection practices, over one third
21
22

23 ¹ See Brief for the CFPB as Amicus Curiae, Dkt. No. 14, p. 10, *Hernandez v. Williams, Zinman, & Parham*,
24 P.C., No. 14-15672 (9th Cir. Aug. 20, 2014), [http://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-
v.williams-zinman-parham-p.c./140821briefhernandez1.pdf](http://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-v.williams-zinman-parham-p.c./140821briefhernandez1.pdf)

1 relate to debt collectors' attempts to collect debts that consumers do not owe.²

2 7. To combat this problem, the FDCPA requires that debt collectors send
3 consumers "validation notices" containing certain information about their alleged
4 debts and related rights "[w]ithin five days after the initial communication with a
5 consumer in connection with the collection of any debt," unless the required
6 information was "contained in the initial communication or the consumer has paid
7 the debt." 15 U.S.C. § 1692g(a).

8 8. These validation notices must advise consumers of, among other things,
9 the right to dispute a respective debt and to request, *in writing*, that the debt collector
10 provide the consumer with certain information. 15 U.S.C. § 1692g(a)(4).

11 9. Specifically, if a consumer "notifies the debt collector *in writing* within
12 the thirty-day period that the debt, or any portion thereof, is disputed," the debt
13 collector must "obtain verification of the debt or a copy of a judgment against the
14 consumer," and mail "a copy of such verification or judgment" to the consumer. *Id.*
15 (emphasis added).

16 10. "[T]his validation requirement was a 'significant feature' of the law that
17 aimed to 'eliminate the recurring problem of debt collectors dunning the wrong
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23 ² See Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act—CFPB Annual Report*
24 *2014* at 9-10 (2014) ("CFPB 2014 Report"), http://files.consumerfinance.gov/f/201403_cfpb_fair-debt-collection-practices-act.pdf

1 person or attempting to collect debts which the consumer has already paid.”³

2 **Jurisdiction and Venue**

3 11. This Court has jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C.
4 § 1331.

5
6 12. Venue is proper in this Court under 28 U.S.C. § 1391(b), as the acts and
7 transactions giving rise to Plaintiffs’ action transpired, at least in part, in this district,
8 and Defendant transacts business in this district.

9 **Parties**

10
11 13. Mr. Schuchardt is a natural person who at all relevant times resided in
12 Pleasanton, California.

13 14. Ms. Muggli is a natural person who at all relevant times resided in
14 Valejo, California.

15 15. Plaintiffs are “consumers” as defined by 15 U.S.C. § 1692a(3).

16
17 16. Defendant is an entity that was at all relevant times engaged in the
18 business of attempting to collect from a Plaintiffs “debts”—in default—as defined
19 by 15 U.S.C. § 1692a(5).

20 17. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

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³ *Hernandez*, No. 14-15672, at 5 (quoting S. Rep. No. 95-382, at 4 (1977)).

Factual Allegations

18. Plaintiffs are obligated, or allegedly obligated, to pay debts now owed or due, or asserted to be owed or due, Bank of America, N.A.

19. Plaintiffs’ obligations, or alleged obligations, owed or due, or asserted to be owed or due Bank of America, N.A., arise from transactions in which the money, property, insurance, or services that are the subject of the transactions were incurred primarily for personal, family, or household purposes.

20. On January 2, 2015, Defendant mailed to Mr. Schuchardt an initial communication that reads, in part:

Creditor: Bank of America, N.A., successor-in-interest to FIA Card Services
Customer: DANIEL H SCHUCHARDT
Balance Owed: \$27,365.58
Previous Acct. #: XXXXXXXXXXXXX3705
Current Acct. #: XXXXXXXXXXXXX0260

Dear DANIEL H SCHUCHARDT,

Our law firm has been retained by Bank of America, N.A., successor-in-interest to FIA Card Services (the “Bank”), in connection with the above-referenced account. Please be advised that the Bank intends to invoke its right to file a lawsuit against you. [15 USC § 1692c(a)(2).]

If you notify this firm within thirty (30) days after your receipt of this letter, that the debt or any portion thereof, is disputed, we will obtain verification of the debt or a copy of the judgment, if any, and mail a copy of such verification or judgment to you. Upon your written request within the same thirty (30) day period mentioned above, we will provide you with the name and address of the original creditor, if different from the current creditor.

1 Unless you dispute the validity of the debt or any portion thereof
2 within thirty (30) days after your receipt of this letter, we will
assume that the debt is valid.

3 This communication is from a debt collector. We are attempting
4 to collect a debt and any information obtained will be used for
5 that purpose. . . .

6 *See Exhibit A.*

7 21. Defendant's January 2, 2015 letter to Mr. Schuchardt was its initial
8 communication to him.

9 22. Defendant did not otherwise communicate with Mr. Schuchardt within
10 the five days following its initial communication to him.

11 23. Also on January 2, 2015, Defendant mailed to Ms. Muggli an initial
12 communication that reads, in part:
13

14 Creditor: Bank of America, N.A., successor-in-
interest to FIA Card Services
15 Customer: MICHELLE M. MUGGLI
16 Balance Owed: \$4,208.76
17 Previous Acct. #: XXXXXXXXXXXXXX3719
Current Acct. #: XXXXXXXXXXXXXX0979

18 Dear MICHELLE M MUGGLI,

19 Our law firm has been retained by Bank of America, N.A.,
20 successor-in-interest to FIA Card Services (the "Bank"), in
21 connection with the above-referenced account. Please be advised
22 that the Bank intends to invoke its right to file a lawsuit against
you. [15 USC § 1692c(a)(2).]

23 If you notify this firm within thirty (30) days after your receipt
24 of this letter, that the debt or any portion thereof, is disputed, we
will obtain verification of the debt or a copy of the judgment, if

1 any, and mail a copy of such verification or judgment to you.
2 Upon your written request within the same thirty (30) day period
3 mentioned above, we will provide you with the name and address
of the original creditor, if different from the current creditor.

4 Unless you dispute the validity of the debt or any portion thereof
5 within thirty (30) days after your receipt of this letter, we will
assume that the debt is valid.

6 This communication is from a debt collector. We are attempting
7 to collect a debt and any information obtained will be used for
8 that purpose. . . .

9 *See Exhibit B.*

10 24. Defendant's January 2, 2015 letter to Ms. Muggli was its initial
11 communication to her.

12 25. Defendant did not otherwise communicate with Ms. Muggli within the
13 five days following its initial communication to her.

14 26. Defendant's January 2, 2015 letters to Plaintiffs violated 15 U.S.C. §
15 1692g(a)(4) by failing to inform them that Defendant need only have mailed
16 verification of the respective debt, or a copy of the judgment, to them if they
17 requested, *in writing*, that Defendant do so.

18 27. That is, Defendant was not required to mail verification of the debt, or
19 a copy of the judgment, to Plaintiffs if they orally requested that Defendant do so.
20

21 28. Defendant's January 2, 2015 communications, however, implied to the
22 least-sophisticated consumer that there is one standard if a consumer wants to obtain
23 the name and address of the original creditor within the subject thirty day time
24

1 period—send a written request—and a different standard if the consumer wants to
2 obtain verification of the debt or a copy of any judgment—make an oral request or
3 send a written request.

4
5 29. This misstatement of the rights afforded by the FDCPA would cause
6 the least-sophisticated consumer to understand, incorrectly, that requests for debt
7 validation could be made orally or by means other than in writing.

8 30. Such a misunderstanding could lead the least-sophisticated consumer
9 to waive or otherwise not properly vindicate his or her rights under the FDCPA.

10 31. Moreover, failing to request verification in writing would cause a
11 consumer to waive the important protections afforded by 15 U.S.C. § 1692g(b)—
12 namely, that a debt collector cease contacting the consumer until the debt collector
13 provides the consumer with verification of the alleged debt.

14
15 32. As one district court explained:

16
17 An oral notice of dispute of a debt’s validity has different legal
18 consequences than a written notice. Section 1692g(b) provides
19 that if the consumer notifies the collector of a dispute *in writing*
20 within the 30-day period, the collector must cease collection
21 activities until he obtains the verification or information required
22 by subsections 1692g(a)(4) and (a)(5). But if the consumer
23 disputes the debt orally rather than in writing, the consumer loses
24 the protections afforded by § 1692g(b); the debt collector is
under no obligation to cease all collection efforts and obtain
verification of the debt. *Withers v. Eveland*, 988 F. Supp. 942,
947 (E.D.Va.1997). An oral dispute “triggers multiple statutory
protections,” but these protections are not identical to those
triggered by a written dispute. *Camacho v. Bridgeport Fin. Inc.*,
430 F.3d 1078, 1081 (9th Cir. 2005). As the Ninth Circuit has

1 explained the FDCPA “assigns lesser rights to debtors who orally
2 dispute a debt and greater rights to debtors who dispute it in
writing.” *Id.* at 1082.

3 *Osborn v. Ekpsz, LLC*, 821 F. Supp. 2d 859, 869-70 (S.D. Tex. 2011) (“Every district
4 court to consider the issue has held that a debt collector violates § 1692g(a) by failing
5 to inform consumers that requests under subsections (a)(4) and (a)(5) must be made
6 in writing.”).

7
8 33. Upon information and good-faith belief, Defendant’s January 2, 2015
9 letters to Plaintiffs are based on a form template used by Defendant to collect
10 consumer debts in default on behalf of Bank of America, N.A.

11
12 **Class Allegations**

13 34. Plaintiffs bring this action under Fed. R. Civ. P. 23, and on behalf of
14 themselves and others similarly situated.

15 35. Plaintiffs seek to represent a class defined as:

16 (a) All persons with a California address, (b) to whom Law
17 Office of Rory W. Clark mailed an initial debt collection
18 communication that stated: “Unless you notify us within 30
19 days after receipt of this communication that the validity of
20 this debt, or any portion of it, is disputed, we will assume that
21 the debt is valid. If you do notify us of a dispute, we will
22 obtain verification of the debt and mail it to you. Also, upon
23 your written request within 30 days, we will provide you with
the name and address of the original creditor if different from
24 the current creditor,” (c) within the year preceding the date of
this complaint, (d) in connection with the collection of a
consumer debt.

1 36. The proposed class specifically excludes the United States of America,
2 the State of California, counsel for the parties, the presiding United States District
3 Court Judge, the Judges of the United States Court of Appeals for the Ninth Circuit,
4 and the Justices of The United States Supreme Court, all officers and agents of
5 Defendant, and all persons related to within the third degree of consanguinity or
6 affection to any of the foregoing individuals.
7

8 37. Upon information and good faith belief, the proposed class is so
9 numerous that joinder of all members is impracticable.
10

11 38. The exact number of the members of the proposed class is unknown at
12 this time, but can be ascertained through appropriate discovery.

13 39. Upon information and good faith belief, the class is ascertainable in that
14 the names and addresses of all members of the proposed class can be identified by
15 Defendant's business records.

16 40. There exists a well-defined community of interest in questions of law
17 and fact that affect all members of the proposed class.

18 41. These common questions of law and fact predominate over questions
19 that may affect individual members of the proposed class.
20

21 42. These common questions of law and fact include, but are not limited to:

- 22 • Defendant's identical conduct with regard to all members of the
23 proposed class;

- 1 • Whether Defendant’s initial debt collection letters fail to contain proper
2 disclosures required by the FDCPA;
- 3 • Whether Defendant is a “debt collector” as defined by the FDCPA;
- 4 • The availability of statutory penalties under the FDCPA;
- 5 • The availability of attorneys’ fees under the FDCPA; and
- 6 • The availability of costs under the FDCPA.

7
8 43. Plaintiffs’ claims are typical of those of the members of the proposed
9 class.

10 44. Plaintiffs’ claims, and the claims of the members of the proposed class,
11 originate from the same conduct, practice, and procedure, on the part of Defendant.

12 45. If brought and prosecuted individually, the claims of each member of
13 the proposed class would require proof of the same material and substantive facts.

14 46. Plaintiffs possess the same interests and have suffered the same injuries
15 as each member of the proposed class.

16 47. Plaintiffs assert identical claims, and seeks the same relief, for both
17 themselves and the members of the proposed class.

18 48. Plaintiffs will fairly and adequately protect the interests of the members
19 of the proposed class.

20 49. Plaintiffs have no interest that directly and irrevocably conflicts with
21 the interests of other members of the proposed class.

1 50. Plaintiffs are willing and prepared to serve this Court and the members
2 of the proposed class.

3 51. Plaintiffs' interests are co-extensive with, and not directly antagonistic
4 to, those of the members of the proposed class.

5 52. Plaintiffs have retained the services of counsel who are experienced in
6 both consumer protection claims and complex class action litigation.

7 53. Plaintiffs' counsel will vigorously prosecute this action, and will assert,
8 protect, and otherwise represent both Plaintiffs and all absent members of the
9 proposed class.
10

11 54. The prosecution of separate actions by individual members of the
12 proposed class may create a risk of inconsistent or varying adjudications with respect
13 to individual members of the proposed class, which could establish incompatible
14 standards of conduct for Defendant.
15

16 55. These incompatible standards of conduct and varying adjudications, on
17 what would necessarily be the same essential facts, proof, and legal theories, could
18 also create and allow the existence of inconsistent and incompatible rights within the
19 proposed class.
20

21 56. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) in that
22 Defendant has acted or refused to act on grounds generally applicable to the
23
24

1 members of the proposed class, making final declaratory or injunctive relief
2 appropriate.

3 57. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) in that
4 the questions of law and fact that are common to members of the proposed class
5 predominate over any questions affecting only individual members of the proposed
6 class.
7

8 58. Moreover, a class action is superior to other methods for the fair and
9 efficient adjudication of the controversies raised in this complaint in that:

- 10 • Individual claims by the members of the proposed class may be
- 11 impracticable as the costs of pursuit could far exceed what any one
- 12 member of the proposed class has at stake;
- 13 • Individual members of the proposed class are unlikely to have an
- 14 interest in prosecuting and controlling separate individual actions; and
- 15 • The concentration of litigation of these claims in one forum will achieve
- 16 efficiency and promote judicial economy.

17 **Count I**
18 **Violation of 15 U.S.C. § 1692g(a)(4)**

19 59. Plaintiffs incorporate the allegations contained in paragraphs 1-58
20 above.

21 60. The FDCPA at Section 1692g(a) provides:

22 Within five days after the initial communication with a consumer
23 in connection with the collection of any debt, a debt collector
24 shall, unless the following information is contained in the initial
communication or the consumer has paid the debt, send the
consumer a written notice containing—

1 (1) the amount of the debt;

2 (2) the name of the creditor to whom the debt is owed;

3 (3) a statement that unless the consumer, within thirty days
4 after receipt of the notice, disputes the validity of the debt,
5 or any portion thereof, the debt will be assumed to be valid
6 by the debt collector;

7 (4) a statement that if the consumer notifies the debt collector
8 in writing within the thirty-day period that the debt, or any
9 portion thereof, is disputed, the debt collector will obtain
10 verification of the debt or a copy of a judgment against the
11 consumer and a copy of such verification or judgment will
12 be mailed to the consumer by the debt collector; and

13 (5) a statement that, upon the consumer's written request
14 within the thirty-day period, the debt collector will provide
15 the consumer with the name and address of the original
16 creditor, if different from the current creditor.

17 15 U.S.C. § 1692g(a)(4)-(5).

18 61. "Every district court to consider the issue has held that a debt collector
19 violates § 1692g(a) by failing to inform consumers that requests under subsections
20 (a)(4) and (a)(5) must be made in writing." *Osborn v. Ekpsz, LLC*, 821 F. Supp. 2d
21 859, 870 (S.D. Tex. 2011) (citing *Bicking*, 783 F.Supp.2d at 844-46; *Beasley v.*
22 *Sessoms & Rogers, P.A.*, No. 5:09-CV-43-D, 2010 WL 1980083, at *6-7 (E.D.N.C.
23 Mar. 1, 2010); *Nero v. Law Office of Sam Streeter*, 655 F.Supp.2d 200, 206
24 (E.D.N.Y.2009); *McCabe v. Crawford & Co.*, 272 F.Supp.2d 736, 742-44
(N.D.Ill.2003); *Carroll v. United Compucred Collections, Inc.*, No. 1-99-0152,

1 2002 WL 31936511, at *8–9 (M.D. Tenn. Nov. 15, 2002); *Grief v. Wilson, Elser,*
2 *Moskowitz, Edelman & Dicker, LLP*, 217 F. Supp. 2d 336, 340–41 (E.D.N.Y.
3 2002)).

4 62. Defendant violated 15 U.S.C. § 1692g(a)(4) by failing to inform
5 Plaintiffs that requests under Subsection (a)(4) of the FDCPA must be made in
6 writing.
7

8 **Count II**
9 **Violation of Cal. Civ. Code § 1788.17**

10 63. Plaintiffs incorporate the allegations contained in paragraphs 1-58
11 above.

12 64. The Rosenthal Act at Section 1788.17 provides:

13 Notwithstanding any other provision of this title, every debt
14 collector collecting or attempting to collect a consumer debt shall
15 comply with the provisions of Sections 1692b to 1692j,
16 inclusive, of, and shall be subject to the remedies in Section
1692k of, Title 15 of the United States Code.

17 Cal. Civ. Code § 1788.17.

18 65. Defendant violated Cal. Civ. Code § 1788.17 by violating the FDCPA.

19 **Trial by Jury**

20 66. Plaintiffs request a trial by jury.
21

22 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

23 a) Determining that this action is a proper class action under Fed. R. Civ.

24 P. 23;

- 1 b) Certifying Plaintiffs as a class representatives;
- 2 c) Appointing Plaintiffs' counsel as class counsel;
- 3 d) Adjudging and declaring that Defendant violated 15 U.S.C.
- 4 1692g(a)(4) and Cal. Civ. Code § 1788.17;
- 5
- 6 e) Awarding Plaintiffs, and members of the proposed class, statutory
- 7 damages;
- 8 f) Awarding Plaintiffs, and members of the proposed class, injunctive and
- 9 declaratory relief;
- 10 g) Awarding Plaintiffs, and members of the proposed class, reasonable
- 11 attorneys' fees and costs incurred in this action;
- 12
- 13 h) Awarding Plaintiffs, and members of the proposed class, any pre-
- 14 judgment and post-judgment interest as may be allowed under the law;
- 15 and
- 16 i) Awarding other and further relief as this Court may deem just and
- 17 proper.
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Dated March 23, 2015

Respectfully submitted,

/s/ Ryan Lee

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