

1 MATTHEW J. KUMAR, ESQ. SBN: 283521
LAW OFFICE OF RORY W. CLARK,
2 A PROFESSIONAL LAW CORPORATION
30699 Russell Ranch Road, Suite 215
3 Westlake Village, California 91362
Tel. (888) 700-4774 Fax. (775) 243-0916
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Attorneys for Defendant,
5 LAW OFFICE OF RORY W. CLARK
A PROFESSIONAL LAW CORPORATION
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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
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11 DANIEL SCHUCHARDT and MICHELLE
MUGGLI, *on behalf of themselves and*
12 *others similarly situated,*

13 Plaintiffs,

14 vs.

15 LAW OFFICE OF RORY W. CLARK, A
PROFESSIONAL LAW CORPORATION,
16

17 Defendant.
18

Case No.: 3:15-cv-01329

- DEFENDANT'S ANSWER TO
PLAINTIFFS' CLASS ACTION
COMPLAINT

Complaint Filed: March 23, 2015

19 Defendant LAW OFFICE OF RORY W. CLARK, A PROFESSIONAL LAW
20 CORPORATION, hereby responds to Plaintiffs' Complaint as follows:

21 1. Answering Paragraph 1 of the Complaint, Defendant admits that Plaintiffs purport
22 to bring a class action against defendant pursuant to the Fair Debt Collection Practices Act
23 ("FDCPA") and the Rosenthal Act. Defendant denies that any violation occurred, and denies that
24 Plaintiffs have a viable class.

25 2. Answering Paragraph 2 of the Complaint, Defendant denies that it failed to
26 properly provide Plaintiffs with disclosures required by the FDCPA, and further denies that it
27 violated the FDCPA or the Rosenthal Act.
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1 3. Answering Paragraphs 3 through 10, inclusive, of the Complaint, Defendant
2 admits the factual background statements set forth by Plaintiffs regarding the history, purpose,
3 requirements, and enforcement of the FDCPA.

4 4. Answering Paragraph 11 of the Complaint, Defendant admits that the subject
5 matter jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. §1331.

6 5. Answering Paragraph 12 of the Complaint, Defendant denies that it violated the
7 FDCPA, and denies that any acts undertaken by it gave rise to Plaintiffs' claims. Defendant
8 admits that it conducts business in this district.

9 6. Answering Paragraphs 13 through 15, inclusive, of the Complaint, Defendant has
10 insufficient information to either admit or deny the allegations contained therein, and therefore
11 denies same.

12 7. Answering Paragraphs 16 and 17 of the Complaint, Defendant admits that it is an
13 entity engaged in the business of collecting delinquent consumer debts. Defendant asserts that
14 whether its actions were within the scope of 15 U.S.C. §1692a(5) and whether it is a debt
15 collector within the meaning of 15 U.S.C. §1692a(6) are legal conclusions, rather than factual
16 allegations.

17 8. Answering Paragraph 18 of the Complaint, Defendant admits that Plaintiffs are
18 obligated to pay debts owed to Bank of America, N.A.

19 9. Answering Paragraph 19 of the Complaint, Defendant admits that Plaintiffs' debts
20 to Bank of America, N.A. were incurred primarily for personal, family, or household purposes.

21 10. Answering Paragraph 20 of the Complaint, Defendant admits that it mailed to
22 Plaintiff Schuchardt the letter cited and attached to the Complaint as Exhibit A, on or about
23 January 2, 2015.

24 11. Answering Paragraph 21 of the Complaint, Defendant admits that said letter was
25 its initial communication to Plaintiff Schuchardt.

26 12. Answering Paragraph 22 of the Complaint, Defendant admits that it did not
27 otherwise communicate with Plaintiff Schuchardt within the five days following its initial
28 communication to him.

1 13. Answering Paragraph 23 of the Complaint, Defendant admits that it mailed to
2 Plaintiff Muggli the letter cited and attached to the Complaint as Exhibit B, on or about January
3 2, 2015.

4 14. Answering Paragraph 24 of the Complaint, Defendant admits that said letter was
5 its initial communication to Plaintiff Muggli.

6 15. Answering Paragraph 25 of the Complaint, Defendant admits that it did not
7 otherwise communicate with Plaintiff Muggli within the five days following its initial
8 communication to her.

9 16. Answering Paragraph 26 of the Complaint, Defendant denies that it violated 15
10 U.S.C. §1692g(a)(4), and further denies that the FDCPA is violated by Defendant's failure to
11 inform Plaintiffs that it would only be required to send verification of the respective debt if a
12 request therefor was made *in writing*.

13 17. Answering Paragraph 27 of the Complaint, Defendant denies that it was not
14 required to mail verification of the debt, or a copy of the judgment, to Plaintiffs if they orally
15 requested that Defendant do so.

16 18. Answering Paragraph 28 of the Complaint, Defendant denies that its January 2,
17 2015 communications implied to the least-sophisticated consumer that there were different
18 standards for obtaining the name and address of the original creditor versus obtaining
19 verification of the debt or a copy of the judgment.

20 19. Answering Paragraph 29 of the Complaint, Defendant denies that it misstated the
21 rights afforded by the FDCPA, and denies that its January 2, 2015 communications would lead a
22 least-sophisticated consumer to have an incorrect understanding of his or her rights to request
23 validation of the subject debt. Defendant denies that a consumer's belief that requests for debt
24 validation could be made to Defendant orally or by means other than in writing would be an
25 incorrect belief.

26 20. Answering Paragraph 30 of the Complaint, Defendant denies that any
27 misunderstanding exists, and further denies that its January 2, 2015 communications could lead a
28 consumer to waive or otherwise not properly vindicate his or her rights under the FDCPA.

1 21. Answering Paragraph 31 of the Complaint, Defendant denies that failing to
2 request verification in writing would cause a consumer to waive the protections afforded by 15
3 U.S.C. §1692g(b).

4 22. Answering Paragraph 32 of the Complaint, Defendant admits the citation from
5 *Osborn V. Ekpsz*, 821 F.Supp.2d 859 (S.D. Tex. 2011), is a valid citation from a district court in
6 the 5th Circuit, which is neither binding nor persuasive authority for consideration in the instant
7 action.

8 23. Answering Paragraph 33 of the Complaint, Defendant admits that the January 2,
9 2015 letters to Plaintiffs were based on a template used by Defendant.

10 24. Answering Paragraph 34 of the Complaint, Defendant admits that Plaintiffs
11 purport to bring this action on behalf of themselves and other similarly situated. Defendant
12 denies that Plaintiffs have a viable class and denies that any persons “similarly situated” to
13 Plaintiffs have encountered actions by Defendant that violate the FDCPA.

14 25. Answering Paragraph 35 of the Complaint, Defendant admits that Plaintiffs seek
15 to define a class as cited in the Complaint. Defendant denies that a viable class exists, and further
16 denies that the named Plaintiffs in this action would be members of the class proposed in the
17 Complaint. Defendant denies that it sent any letters containing the language: “If you do notify us
18 of a dispute, we will obtain verification of the debt and mail it to you.”

19 26. Answering Paragraph 36 of the Complaint, Defendant admits that Plaintiffs seek
20 to exclude governmental agencies and officers from its proposed class. Defendant denies that a
21 viable class exists, or that any individuals have encountered actions by Defendant that violate the
22 FDCPA.

23 27. Answering Paragraph 37 of the Complaint, Defendant denies that the proposed
24 class is so numerous that joinder is impractical. Defendant denies that a viable class exists, or
25 that any individuals have encountered actions by Defendant that violate the FDCPA.

26 28. Answering Paragraph 38 of the Complaint, Defendant has insufficient information
27 to either admit or deny the allegation, and therefore denies same.
28

1 29. Answering Paragraph 39 of the Complaint, Defendant denies that a class is
2 ascertainable from its business records. Defendant denies that a viable class exists, or that any
3 individuals have encountered actions by Defendant that violate the FDCPA.

4 30. Answering Paragraph 40 of the Complaint, Defendant denies that common
5 questions of law and fact exist affecting members of any proposed class.

6 31. Answering Paragraph 41 of the Complaint, Defendant denies that common
7 questions of law and fact exist affecting members of any proposed class.

8 32. Answering Paragraph 42 of the Complaint, Defendant denies each and every
9 allegation.

10 33. Answering Paragraph 43 of the Complaint, Defendant denies that Plaintiffs'
11 claims are typical of the members of the proposed class. The language in the letters sent to
12 Plaintiffs (which are attached as Exhibits to the Complaint) does not match the language
13 proposed to be used to define the class.

14 34. Answering Paragraph 44 of the Complaint, Defendant denies that Plaintiffs'
15 claims arise from the conduct as the proposed class. The language in the letters sent to Plaintiffs
16 (which are attached as Exhibits to the Complaint) does not match the language proposed to be
17 used to define the class.

18 35. Answering Paragraph 45 of the Complaint, Defendant denies that claims from any
19 member of a proposed class could be brought and prosecuted successfully, and denies any and all
20 further allegations in Paragraph 45.

21 36. Answering Paragraph 46 of the Complaint, Defendant denies that Plaintiffs—or
22 any members of the proposed class—have suffered any injuries or have any interests that could
23 lead to recovery or remuneration.

24 37. Answering Paragraph 47 of the Complaint, Defendant denies that Plaintiffs assert
25 identical claims as the members of the proposed class. The language in the letters sent to
26 Plaintiffs (which are attached as Exhibits to the Complaint) does not match the language
27 proposed to be used to define the class.
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1 38. Answering Paragraphs 48 through 53, inclusive, of the Complaint, Defendant has
2 insufficient information to either admit or deny the allegation, and therefore denies same.

3 39. Answering Paragraphs 54 and 55 of the Complaint, Defendant denies that the
4 prosecution of separate actions could create a risk of inconsistent or varying adjudications and
5 thus establish incompatible standards of conduct. Defendant denies that separate actions would
6 result in inconsistent or incompatible rights for consumers within the proposed class.

7 40. Answering Paragraphs 56 and 57 of the Complaint, Defendant denies that class
8 certification is appropriate, on the grounds that no viable class exists, and on the grounds that no
9 violation of the FDCPA giving rise to a claim for relief has been committed by Defendant.

10 41. Answering Paragraph 58 of the Complaint, Defendant has insufficient information
11 to either admit or deny the allegation, and therefore denies same.

12 42. Answering Paragraph 59 of the Complaint, Defendant denies that the allegations
13 contained in Paragraphs 1-58 have any bearing on the alleged "Count I" for violation of 15
14 U.S.C. §1692g(a)(4). Defendant denies that it violated 15 U.S.C. §1692g(a)(4).

15 43. Answering Paragraph 60 of the Complaint, Defendant admits that 15 U.S.C.
16 §1692g(a) reads as cited in Plaintiffs' Complaint.

17 44. Answering Paragraph 61 of the Complaint, Defendant admits the citation from
18 *Osborn V. Ekpsz*, 821 F.Supp.2d 859 (S.D. Tex. 2011), is a valid citation from a district court in
19 the 5th Circuit, which is neither binding nor persuasive authority for consideration in the instant
20 action.

21 45. Answering Paragraph 62 of the Complaint, Defendant denies that it violated 15
22 U.S.C. §1692g(a)(4) by failing to inform Plaintiffs that requests under subsection (a)(4) must be
23 made in writing. Defendant denies that requests made to it for validation of debt under 15 U.S.C.
24 §1692g(a)(4) must be made in writing. Defendant denies that its January 2, 2015
25 communications to Plaintiffs violated the FDCPA in any way.

26 46. Answering Paragraph 63 of the Complaint, Defendant denies that the allegations
27 in Paragraphs 1-58 have any bearing on the alleged "Count II" for violation of California Civil
28 Code §1788.17. Defendant denies that it violated California Civil Code §1788.17.

1 47. Answering Paragraph 64 of the Complaint, Defendant admits that California Civil
2 Code §1788.17 reads as cited in the Complaint.

3 48. Answering Paragraph 65 of the Complaint, Defendant denies that it violated
4 California Civil Code §1788.17 and further denies that it violated the FDCPA.

5 **AFFIRMATIVE DEFENSES**

6 49. AS A FIRST, SEPARATE, AND AFFIRMATIVE DEFENSE, Defendant alleges
7 that the Complaint, and each count contained therein, fails to state facts sufficient to constitute a
8 cause of action against Defendant.

9 50. AS A SECOND, SEPARATE, AND AFFIRMATIVE DEFENSE, Defendant
10 alleges that Plaintiffs failed to exercise reasonable care in evaluating the information presented to
11 them, in that they failed to take any actions to communicate to Defendant—in any manner or
12 mode—that the debt was disputed or that validation of the debt was requested. These willful
13 failures on the part of Plaintiffs contributed to their incorrect belief about their rights with respect
14 to Defendant’s collection efforts.

15 51. AS A THIRD, SEPARATE, AND AFFIRMATIVE DEFENSE, Defendant
16 alleges that the Complaint was brought without a reasonable cause and without a good faith
17 belief that there was a justifiable controversy under the facts and law to warrant the filing of said
18 Complaint against Defendant. Therefore, Plaintiffs are liable for all necessary and reasonable
19 costs of Defendant’s defense, as more particularly set forth in 15 U.S.C. §1692k(a)(3).

20 52. AS A FOURTH, SEPARATE, AND AFFIRMATIVE DEFENSE, Defendant
21 alleges that declaratory relief is not available under the FDCPA or the Rosenthal Act.

22 53. AS A FIFTH, SEPARATE, AND AFFIRMATIVE DEFENSE, Defendant alleges
23 that Plaintiffs’ purported class lacks the requirements for class action under FRCP 23,
24 including—but not limited to—typicality, commonality, and superiority.

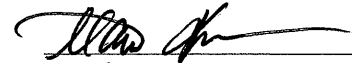
25 54. AS A SIXTH, SEPARATE, AND AFFIRMATIVE DEFENSE, Defendant alleges
26 that it presently has insufficient knowledge with which to form a belief as to whether additional,
27 as yet unstated, separate, and affirmative defenses may be available to it. Defendant hereby
28 reserves the right to assert additional and different defenses as such may become known to it.

1 WHEREFORE, Defendant denies every request in Plaintiff's prayer, and prays as follows:

- 2 1. That Plaintiffs take nothing by way of their Complaint;
- 3 2. That judgment be entered in favor of Defendant;
- 4 3. For recovery of court costs and reasonable attorney's fees incurred; and
- 5 4. For any such other and further relief as the Court deems just and proper.

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7 Dated: JUN 01 2015


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9 Matthew J. Kumar, Esq.
10 Attorney for Defendant

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