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

17 Joyce Harper and Leila Emerson, *on*) Case No.
18 *behalf of themselves and others*)
19 *similarly situated,*) PLAINTIFF’S CLASS ACTION
20) COMPLAINT
21 Plaintiffs,)
22) JURY DEMANDED
23 vs.)
24)
25 The Law Office of Harris and Zide)
26 LLP,)
27)
28 Defendant.)
29 _____)
30)

31 **Nature of this Action**

32 1. Joyce Harper and Leila Emerson (“Plaintiffs”) bring this class action
33 against The Law Office of Harris and Zide LLP (“Defendant”) under the federal Fair
34 Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

1 7. To combat this problem, the FDCPA requires that debt collectors send
2 consumers “validation notices” containing certain information about their alleged
3 debts and related rights “[w]ithin five days after the initial communication with a
4 consumer in connection with the collection of any debt,” unless the required
5 information was “contained in the initial communication or the consumer has paid
6 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
18 person or attempting to collect debts which the consumer has already paid.’”³
19
20
21
22
23
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³ *Hernandez*, No. 14-15672, at 5 (quoting S. Rep. No. 95-382, at 4 (1977)).

1 **Jurisdiction and Venue**

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

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

7 **Parties**

8 13. Plaintiffs are natural persons who at all relevant times resided in Los
9 Angeles, California, which is in Los Angeles County, and Newark, California, which
10 is Alameda County.

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

12 15. Defendant is an entity who was at all relevant times engaged in the
13 business of attempting to collect from Plaintiffs “debts”—in default—as defined by
14 15 U.S.C. § 1692a(5).

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

16 **Factual Allegations**

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

19 18. Plaintiffs’ obligations, or alleged obligations, owed or due, or asserted
20 to be owed or due Bank of America, N.A., arise from transactions in which the
21
22
23
24

1 money, property, insurance, or services that are the subject of the transactions were
2 incurred primarily for personal, family, or household purposes.

3 19. On January 7, 2015, Defendant mailed to Ms. Harper an initial
4 communication that reads, in part:
5

6 Creditor: Bank of America, N.A., successor-in-
interest to FIA Card Services
7 Customer: JOYCE E HARPER
8 Balance Owed: \$9,594.99
9 Previous Acct. #: XXXXXXXXXXXXX6414
Current Acct. #: XXXXXXXXXXXXX7151

10 Dear JOYCE E HARPER,

11 Our law firm has been retained by Bank of America, N.A.,
12 successor-in-interest to FIA Card Services (the “Bank”), in
13 connection with the above-referenced account. Please be advised
14 that the Bank intends to invoke its right to file a lawsuit against
you.

15 If you notify this firm within thirty (30) days after your receipt
16 of this letter, that the debt or any portion thereof, is disputed, we
17 will obtain verification of the debt or a copy of the judgment, if
18 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.

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

22 * * *

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

1
2 *See Exhibit A.*

3 20. Defendant’s January 7, 2015 letter to Ms. Harper was its initial
4 communication to her.

5 21. Defendant did not otherwise communicate with Ms. Harper within the
6 five days following its initial communication to her.

7 22. On January 7, 2015, Defendant mailed to Ms. Emerson an initial
8 communication that reads, in part:
9

10 Creditor: Bank of America, N.A., successor-in-
11 interest to FIA Card Services
12 Customer: LEILA EMERSON
13 Current Balance: \$14,456.77
14 Previous Acct. #: XXXXXXXXXXXXX2548
15 Current Acct. #: XXXXXXXXXXXXX8799

16 Dear LEILA EMERSON,

17 Our law firm has been retained by Bank of America, N.A.,
18 successor-in-interest to FIA Card Services (the “Bank”), in
19 connection with the above-referenced account. Please be advised
20 that the Bank intends to invoke its right to file a lawsuit against
21 you.

22 If you notify this firm within thirty (30) days after your receipt
23 of this letter, that the debt or any portion thereof, is disputed, we
24 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
3 assume that the debt is valid.

4 * * *

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

8 *See Exhibit B.*

9 23. Defendant's January 7, 2015 letter to Ms. Emerson was its initial
10 communication to her.

11 24. Defendant did not otherwise communicate with Ms. Emerson within
12 the five days following its initial communication with her.

13 25. Defendant's January 7, 2015 letters to Plaintiffs violated 15 U.S.C. §
14 1692g(a)(4) by failing to inform them that Defendant need only have mailed
15 verification of the respective debt, or a copy of the judgment, to them if they
16 requested, *in writing*, that Defendant do so.

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

19 27. Defendant's January 7, 2015 communications, however, imply to the
20 least sophisticated consumer that there is one standard if a consumer wants to obtain
21 the name and address of the original creditor within the subject thirty day time
22 period—send a written request—and a different standard if the consumer wants to
23
24

1 obtain verification of the debt or a copy of any judgment—make an oral request or
2 send a written request.

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

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

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

14 31. As one district court explained:

15 An oral notice of dispute of a debt’s validity has different legal
16 consequences than a written notice. Section 1692g(b) provides
17 that if the consumer notifies the collector of a dispute *in writing*
18 within the 30-day period, the collector must cease collection
19 activities until he obtains the verification or information required
20 by subsections 1692g(a)(4) and (a)(5). But if the consumer
21 disputes the debt orally rather than in writing, the consumer loses
22 the protections afforded by § 1692g(b); the debt collector is
23 under no obligation to cease all collection efforts and obtain
24 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
explained the FDCPA “assigns lesser rights to debtors who orally

1 dispute a debt and greater rights to debtors who dispute it in
2 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 32. Upon information and good-faith belief, Defendant’s January 7, 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 **Class Allegations**

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

14 34. Plaintiffs seek to represent a class defined as:

15
16 (a) All persons with a California address, (b) to whom The Law
17 Office of Harris and Zide mailed an initial debt collection
18 communication that stated: “If you notify this firm within thirty
19 (30) days after your receipt of this letter, that the debt or any
20 portion thereof, is disputed, we will obtain verification of the
21 debt or a copy of the judgment, if any, and mail a copy of such
22 verification or judgment to you,” (c) within the year preceding
23 the date of this complaint, (d) in connection with the collection
24 of a consumer debt on behalf of Bank of America, N.A.

25 35. The proposed class specifically excludes the United States of America,
26 the State of California, counsel for the parties, the presiding United States District
27 Court Judge, the Judges of the United States Court of Appeals for the Ninth Circuit,

1 and the Justices of The United States Supreme Court, all officers and agents of
2 Defendant, and all persons related to within the third degree of consanguinity or
3 affection to any of the foregoing individuals.

4
5 36. Upon information and good faith belief, the proposed class is so
6 numerous that joinder of all members is impracticable.

7 37. The exact number of the members of the proposed class is unknown at
8 this time, but can be ascertained through appropriate discovery.

9 38. Upon information and good faith belief, the class is ascertainable in that
10 the names and addresses of all members of the proposed class can be identified by
11 Defendant's business records.

12
13 39. There exists a well-defined community of interest in questions of law
14 and fact that affect all members of the proposed class.

15 40. These common questions of law and fact predominate over questions
16 that may affect individual members of the proposed class.

17
18 41. These common questions of law and fact include, but are not limited to:

- 19
- 20 • Defendant's identical conduct with regard to all members of the
21 proposed class;
 - 22 • Whether Defendant's initial debt collection letters fail to contain proper
23 disclosures required by the FDCPA;
 - 24 • Whether Defendant is a "debt collector" as defined by the FDCPA;
 - The availability of statutory penalties under the FDCPA;

- 1 • The availability of attorneys' fees under the FDCPA; and
- 2 • The availability of costs under the FDCPA.

3 42. Plaintiffs' claims are typical of those of the members of the proposed
4 class.

5 43. Plaintiffs' claims, and the claims of the members of the proposed class,
6 originate from the same conduct, practice, and procedure, on the part of Defendant.

7 44. If brought and prosecuted individually, the claims of each member of
8 the proposed class would require proof of the same material and substantive facts.

9 45. Plaintiffs possess the same interests and have suffered the same injuries
10 as each member of the proposed class.

11 46. Plaintiffs assert identical claims, and seek the same relief, for both
12 themselves and the members of the proposed class.

13 47. Plaintiffs will fairly and adequately protect the interests of the members
14 of the proposed class.

15 48. Plaintiffs have no interest that directly and irrevocably conflicts with
16 the interests of other members of the proposed class.

17 49. Plaintiffs are willing and prepared to serve this Court and the members
18 of the proposed class.

19 50. Plaintiffs' interests are co-extensive with, and not directly antagonistic
20 to, those of the members of the proposed class.

1 51. Plaintiffs have retained the services of counsel who are experienced in
2 both consumer protection claims and complex class action litigation.

3 52. Plaintiffs' counsel will vigorously prosecute this action, and will assert,
4 protect, and otherwise represent both Plaintiffs and all absent members of the
5 proposed class.
6

7 53. The prosecution of separate actions by individual members of the
8 proposed class may create a risk of inconsistent or varying adjudications with respect
9 to individual members of the proposed class, which could establish incompatible
10 standards of conduct for Defendant.
11

12 54. These incompatible standards of conduct and varying adjudications, on
13 what would necessarily be the same essential facts, proof, and legal theories, could
14 also create and allow the existence of inconsistent and incompatible rights within the
15 proposed class.

16 55. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) in that
17 Defendant has acted or refused to act on grounds generally applicable to the
18 members of the proposed class, making final declaratory or injunctive relief
19 appropriate.
20

21 56. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) in that
22 the questions of law and fact that are common to members of the proposed class
23
24

1 predominate over any questions affecting only individual members of the proposed
2 class.

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

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

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

14 58. Plaintiffs incorporate the allegations contained in paragraphs 1-57
15 above.

16 59. The FDCPA at Section 1692g(a) provides:

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

21 (1) the amount of the debt;

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

23 (3) a statement that unless the consumer, within thirty days
24 after receipt of the notice, disputes the validity of the debt,

1 or any portion thereof, the debt will be assumed to be valid
2 by the debt collector;

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

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

13 15 U.S.C. § 1692g(a)(4)-(5).

14 60. "Every district court to consider the issue has held that a debt collector
15 violates § 1692g(a) by failing to inform consumers that requests under subsections
16 (a)(4) and (a)(5) must be made in writing." *Osborn v. Ekpsz, LLC*, 821 F. Supp. 2d
17 859, 870 (S.D. Tex. 2011) (citing *Bicking*, 783 F.Supp.2d at 844-46; *Beasley v.*
18 *Sessoms & Rogers, P.A.*, No. 5:09-CV-43-D, 2010 WL 1980083, at *6-7 (E.D.N.C.
19 Mar. 1, 2010); *Nero v. Law Office of Sam Streeter*, 655 F.Supp.2d 200, 206
20 (E.D.N.Y.2009); *McCabe v. Crawford & Co.*, 272 F.Supp.2d 736, 742-44
21 (N.D.Ill.2003); *Carroll v. United Compucred Collections, Inc.*, No. 1-99-0152,
22 2002 WL 31936511, at *8-9 (M.D.Tenn. Nov. 15, 2002); *Grief v. Wilson, Elser,*
23 *Moskowitz, Edelman & Dicker, LLP*, 217 F.Supp.2d 336, 340-41 (E.D.N.Y. 2002)).

1 i) Awarding other and further relief as this Court may deem just and
2 proper.
3

4 Dated March 10, 2015

Respectfully submitted,

6 /s/ Ryan Lee

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