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17 Hugo Aguilar

18 **UNITED STATES DISTRICT COURT**
19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 **HUGO AGUILAR, individually and**
21 **on behalf of all others similarly**
22 **situated,**

23 **Plaintiff,**

24 **v.**

25 **SUNRISE CREDIT SERVICES,**
26 **INC.,**

27 **Defendant.**

28 **Case No.: '17CV1787 DMS AGS**

CLASS ACTION

COMPLAINT FOR DAMAGES
FOR VIOLATION OF:

- I. **THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692, ET SEQ.; AND,**
- II. **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 wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq, to eliminate abusive debt collection practices by debt collectors, to ensure 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. Hugo Aguilar (“Plaintiff”), individually and on behalf of all others similarly situated, brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Sunrise Credit Services, Inc. (“Defendant”) with regard to attempts by Defendant to unlawfully and abusively collect a debt allegedly owed by Plaintiff, in violation of Federal and State debt collection laws.

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

13 **JURISDICTION AND VENUE**

- 14 8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
15 1692k and 28 U.S.C. § 1367 for supplemental state claims.
- 16 9. This action arises out of Defendant's violations of (i) the Fair Debt Collection
17 Practices Act, 15 U.S.C. §§ 1692, et seq ("FDCPA"); and, (ii) the Rosenthal
18 Fair Debt Collection Practices Act, Cal. Civ. Code §§ 1788, et seq.
19 ("RFDCPA").
- 20 10. Because Defendant conducts business within the State of California, personal
21 jurisdiction is established.
- 22 11. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
23 Plaintiff resides in the County of San Diego, State of California which is
24 within this judicial district; (ii) the conduct complained of herein occurred
25 within this judicial district; and, (iii) Defendant conducts business within this
26 judicial district and is located within this judicial district as well.

27 **PARTIES**

- 28 12. Plaintiff is a natural person who resides in the County of San Diego, State of

1 California, from whom a debt collector sought to collect a consumer debt
2 which was due and owing or alleged to be due and owing from Plaintiff, and is
3 a “debtor” as that term is defined by California Civil Code § 1788.2(h). In
4 addition, Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
5 1692a(3).

6 13. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
7 corporation registered in the state of New York with its principal place of
8 business in New York.

9 14. Plaintiff is informed and believes, and thereon alleges, that Defendant, in the
10 ordinary course of business, regularly, on behalf of itself or others, engages in
11 debt collection as that term is defined by California Civil Code § 1788.2(b),
12 and is therefore a “debt collector” as that term is defined by California Civil
13 Code § 1788.2(c) and 15 U.S.C. § 1692a(6).

14 15. This case involves money, property or their equivalent, due or owing or
15 alleged to be due or owing from a natural person by reason of a consumer
16 credit transaction. As such, this action arises out of a “consumer debt” and
17 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f)
18 and a “debt” as that term is defined by 15 U.S.C. 1692a(5).

19 **FACTUAL ALLEGATIONS**

20 16. At all times relevant, Plaintiff is and was an individual residing within the
21 State of California.

22 17. Sometime prior to May 2015, Plaintiff incurred financial obligations to
23 Comenity Capital Bank for a personal credit card.

24 18. These alleged financial obligations were money, property, or their equivalent,
25 which is due or owing, or alleged to be due or owing, from a natural person to
26 another person and were therefore “debt[s]” as that term is defined by
27 California Civil Code §1788.2(d), and a “consumer debt” as that term is
28 defined by California Civil Code §1788.2(f).

1 19. Sometime thereafter, Plaintiff allegedly fell behind on payments owed on the
2 alleged debt. Plaintiff disputes the validity of the debt.

3 20. As a result, Plaintiff received a written communication from Defendant by
4 U.S. mail on or around September 9, 2016 in attempt to collect the debt. The
5 communication contained the following information: "Account Balance:
6 \$431.32," "Other Charges: \$294.58," and "Balance Due: \$725.90".

7 21. Comenity Bank does not impose any additional charges.

8 22. On or around September 20, 2016, Plaintiff received another written
9 communication from Defendant by U.S. mail in attempt to collect the debt.
10 The communication contained the following information: "Account Balance:
11 \$431.32," "Other Charges: \$294.58," and "Balance Due: \$725.90".

12 23. Defendant attempt to collect "Other Charges," however, the collection of
13 "Other Charges" was not expressly authorized by the agreement creating the
14 debt, in violation of 15 U.S.C. § 1692f(1) and Cal. Civ. Code § 1788.17.

15 24. Moreover, Defendant did not describe the nature of such charges.

16 25. On October 14, 2016, Plaintiff checked his credit report, whereby Comenity
17 Capital Bank reported a balance of \$710 to both Trans Union and Equifax,
18 rather than the "Balance Due: \$725.90" contained in the communications from
19 Defendant.

20 26. Defendant's additional unauthorized charges were almost as high as the
21 principal balance sought.

22 27. Defendant was never authorized to collect the unconscionable, unreasonable,
23 and unnecessary collection fees disguised as "other charges."

24 28. Defendantt also used unfair or unconscionable means to collect or attempt to
25 collect a debt. Consequently, Defendant violated 15 U.S.C. § 1692f too. This
26 section is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17;
27 thus, Defendant also violated Cal. Civ. Code § 1788.17.
28

CLASS ALLEGATIONS

1
2 29. Plaintiff brings this action on behalf of himself individually, and on behalf of
3 all others similarly situated (“the Classes”).

4 30. Plaintiff defines Class 1 as:

5 (i) all persons with addresses within the United States of
6 America; (ii) who were sent one or more collection
7 letter(s) by Defendant; (iii) that were substantially similar
8 to the letter Defendant sent Plaintiff; (iv) to recover a
9 consumer debt; (v) which was not returned undeliverable
10 by the United States Postal Service; (vi) at any time one
11 year prior to the date of the filing of this Action.

12 31. Plaintiff defines Class 2 as:

13 (i) all persons with addresses within the State of
14 California; (ii) who were sent one or more collection
15 letter(s) by Defendant; (iii) that were substantially similar
16 to the letter Defendant sent Plaintiff; (iv) to recover a
17 consumer debt; (v) which was not returned undeliverable
18 by the United States Postal Service; (vi) at any time one
19 year prior to the date of the filing of this Action.

20 32. Plaintiff refers to Class 1; and, Class 2 jointly as “The Classes.”

21 33. Defendant and their employees or agents are excluded from the Classes.

22 34. Plaintiff does not know the exact number of persons in the Classes, but
23 believes them to be in the several hundreds, if not thousands, making joinder of
24 all these actions impracticable.

25 35. The identity of the individual members is ascertainable through Defendant’s
26 and/or Defendant’s agents’ records or by public notice.

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

- 1 a. Whether Defendant violated the FDCPA as described herein;
- 2 b. Whether Defendant violated the RFDCPA as described herein;
- 3 c. Whether members of the Classes are entitled to the remedies under the
- 4 FDCPA;
- 5 d. Whether members of the Classes are entitled to the remedies under the
- 6 RFDCPA;
- 7 e. Whether members of the Classes are entitled to declaratory relief;
- 8 f. Whether members of the Classes are entitled to injunctive relief;
- 9 g. Whether members of the Classes are entitled to an award of
- 10 reasonable attorneys' fees and costs of suit pursuant to the FDPCA;
- 11 h. Whether members of the Classes are entitled to an award of
- 12 reasonable attorneys' fees and costs of suit pursuant to the RFDPCA;
- 13 i. Whether Defendant may satisfy Defendant's affirmative defense of
- 14 bona fide error with regard to Defendant's violation of the FDCPA;
- 15 and,
- 16 j. Whether Defendant may satisfy Defendant's affirmative defense of
- 17 bona fide error with regard to Defendant's violation of the RFDCPA.

18 37. Plaintiff will fairly and adequately protect the interest of the Classes.

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

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

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

25 41. Class-wide damages are essential to induce Defendant to comply with the
26 federal and State laws alleged in the Complaint.

27 42. The interests of class members in individually controlling the prosecution of
28 separate claims against Defendant is small because the maximum statutory

1 damages in an individual action under the FDCPA and the RFDCPA is \$1,000.
2 Management of these claims is likely to present significantly fewer difficulties
3 than those presented in many class claims, e.g., securities fraud.

4 43. Defendant has acted on grounds generally applicable to the Classes, thereby
5 making appropriate final declaratory relief with respect to the Classes as a
6 whole.

7 44. Plaintiff contemplates providing notice to the putative class members by direct
8 mail in the form of a postcard-type notice and via Internet website.

9 45. Plaintiff requests certification of a hybrid class for monetary damages and
10 injunctive relief.

11 **COUNT I**

12 **VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

13 **15 U.S.C. §§ 1692 ET SEQ.**

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

16 47. The foregoing acts and omissions constitute numerous and multiple violations
17 of the FDCPA, including but not limited to each and every one of the above-
18 cited provisions of the FDCPA, 15 U.S.C. §§ 1692 et seq.

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

24 **COUNT II**

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

26 **Cal. Civ. Code § 1788, et seq.**

27 49. Plaintiff incorporates by reference all of the above paragraphs of this
28 Complaint as though fully stated herein.

1 50. The foregoing acts and omissions constitute numerous and multiple violations
2 of the RFDCPA.

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

9 **PRAYER FOR RELIEF**

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

- 11 • That this action be certified as a class action on behalf of the Classes and
12 Plaintiff be appointed as the representative of the Classes;
- 13 • An award of actual damages, in an amount to be determined at trial,
14 pursuant to Cal. Civ. Code § 1788.30(a), for each plaintiff and putative
15 class member;
- 16 • An award of actual damages, in an amount to be determined at trial,
17 pursuant to 15 U.S.C. § 1692k(a)(1), against each named Defendant
18 individually;
- 19 • An award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code
20 § 1788.30(b), for each plaintiff and putative class member;
- 21 • An award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. §
22 1692k(a)(2)(A), against each named Defendant individually;
- 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), against each named Defendant individually;
27 and,
- 28 • Any and all other relief that this Court deems just and proper.

TRIAL BY JURY

52. 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: August 29, 2017

Respectfully submitted,

HYDE & SWIGART

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CIVIL COVER SHEET 17CV1787 DMS AGS

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

HUGO AGUILAR, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Joshua B. Swigart, Esq. Hyde & Swigart 619-233-7770 2221Camino Del Rio S., Ste. 101, San Diego, CA 92108

DEFENDANTS

SUNRISE CREDIT SERVICES, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 1692 et seq. ("FDCPA") Brief description of cause: Defendant violated the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/31/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Joshua B. Swigart

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Sunrise Credit Services Faces FDCPA Class Action](#)
