

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**JOHN AND KIM LIND, individually
and on behalf of all others similarly
situated,
*Plaintiff,***

v.

**BERKSHIRE AND LEWIS
LITIGATION, FISHER & BURNS
FINANCIAL, LLC AND BERKS &
LEWIS LITIGATION GROUP, LLC
*Defendant***

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§ **CIVIL ACTION NO. 4:16-cv-848**
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§ **JURY**
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§ **COMPLAINT – CLASS ACTION**
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ORIGINAL CLASS ACTION COMPLAINT

Jury Trial Requested

Plaintiffs Kim and John Lind (hereinafter “Plaintiffs”) file this Original Class Action Complaint. Plaintiffs institute the action in accordance with, and to remedy violations by, Defendants Berkshire and Lewis Litigation, Fisher & Burns Financial, LLC and Berks & Lewis Litigation Group, LLC (hereinafter referred to as “Defendants”) of the Telephone Consumer Protection Act, 47 U.S.C.A § 227, *et seq.* (hereinafter “TCPA”); the Fair Debt Collection Practices Act, 15 U.S.C.A. §1692, *et seq.* (hereinafter “FDCPA”); the Rosenthal Fair Debt Collection Practices Act, CAL. FIN. CODE § 1788, *et seq.* (hereinafter “Rosenthal Act”) and the Texas Debt Collection Act, TEX. FIN. CODE § 392.001, *et seq.* (hereinafter “TDCA”). Plaintiffs bring this action individually and on behalf of all other persons similarly situated (hereinafter “Class Members”) to recover damages and to enjoin Defendants from their unlawful conduct.

**I.
PARTIES**

1. Plaintiffs Kim and John Lind are natural persons who reside in Collin County, Texas and are both “consumers” as defined by 15 U.S.C. §1692a(3) and TEX. FIN. CODE § 392.001(1).
2. Defendant Berkshire and Lewis Litigation is a California corporation which operates as a collection agency. Its primary business is the purchase of delinquent and defaulted debt and/or the collection of debt owed to others and is, therefore, considered to be a “debt collector” as the term is defined and understood pursuant to 15 U.S.C. § 1692a(6) and TEX. FIN. CODE § 392.001(6). Its principal place of business is at PO Box 56790 Newport Beach, CA 92663.
3. Defendant Fisher & Burns Financial, LLC is a California corporation which operates as a collection agency. Its primary business is the purchase of delinquent and defaulted debt and/or the collection of debt owed to others and is, therefore, considered to be a “debt collector” as the term is defined and understood pursuant to 15 U.S.C. § 1692a(6) and TEX. FIN. CODE § 392.001(6). Its registered address with the California Secretary of State is 3419 East Chapman Ave, Suite 500, Orange, CA 92869 and may be served through its registered agent, Richard Arthur, National Corporate Research, Ltd., 600 Wilshire Boulevard, Suite 980, Los Angeles, CA 90017.
4. Defendant Berks & Lewis Litigation Group, LLC is a limited liability company incorporated in the state of Delaware but doing business primarily from Ontario, California at the registered address with the California Secretary of State of 3296 E Guasti Road, Suite 100, Ontario, CA 91761 and may be served through its registered agent, Paracorp Incorporated/Matthew Marzucco at 2804 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833-3509. Its primary business is the purchase of delinquent and defaulted debt and/or the collection of debt owed to others and is, therefore, considered to be a “debt collector” as the term is defined and understood pursuant to 15 U.S.C. § 1692a(6) and TEX. FIN. CODE § 392.001(6).
5. All conditions precedent to Plaintiffs proceedings with this lawsuit have occurred.

II.
JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2). Plaintiff alleges several nationwide classes, which will result in at least one class member from each class belonging to a state different than the state in which the Defendants are deemed to reside.

7. Pursuant to 28 U.S.C.A. § 1367(a), Plaintiffs and Class Members invoke the supplemental jurisdiction of this Court to hear and decide claims against the Defendants arising under state law.

8. Venue in this District is appropriate under 28 U.S.C.A. §§ 1391 (b) and (c) and 1441(a) because: (i) Defendants are actively doing business in this State and are subject to personal jurisdiction throughout the State; (ii) Defendants transact business in the State and in the District by and through the collection of consumer debts in this State and District; and (iii) a substantial part of the acts, transactions, events and/or omissions giving rise to the claims occurred in this District. Venue is also proper in this District because Plaintiffs have resided in this District at all times relevant to these claims.

IV.
THE TELEPHONE CONSUMER PROTECTION ACT OF 1991
(“TCPA”), 47 U.S.C. § 227

9. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA),¹ in response to a growing number of consumer complaints regarding certain telemarketing practices.

¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

10. The TCPA regulates, among other things, the use of automated telephone dialing equipment, or “autodialers.” Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.²

11. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.³

12. The Federal Communications Commission has defined a “predictive dialer” as:

equipment that dials numbers and, when certain computer software is attached, also assists telemarketers in predicting when a sales agent will be available to take calls. The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers . . . [i]n most cases, telemarketers program the numbers to be called into the equipment, and the dealer calls them at a rate to ensure that when a consumer answers the phone, a sales person is available to take the call.⁴

Moreover, the FCC has determined that a “predictive dialer falls within the meaning and statutory definition of ‘automatic telephone dialing equipment’ and the intent of Congress.”

III.
THE FAIR DEBT COLLECTION PRACTICES ACT,
(“FDCPA”), 15 U.S.C. § 1692 *et seq.*

² 47 U.S.C. § 227(b)(1)(A)(iii).

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

⁴ 2003 TCPA Order, 18 FCC Rcd at 14091, para. 131.

13. In enacting the FDCPA, Congress explicitly found that there was “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors” that “contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692(a). As stated in the preamble to the law, the purpose of the FDCPA is to “eliminate abusive debt collection practices by debt collectors . . . to protect consumers against debt collection abuses.” 15 U.S.C. § 1692(e). “The statute is designed to protect consumers from unscrupulous collectors, regardless of the validity of the debt.” *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 341 (7th Cir. 1997) *citing Baker v. G.C. Servs. Corp.*, 677 F.2d 775, 777 (9th Cir. 1982). Given this purpose, it logically follows that “[t]he FDCPA does not require proof of actual damages as a condition to the recovery of statutory damages.” *Smith v. Procollect, Inc.*, 2011 WL 1375667, *7 (E.D. Tex. April 12, 2001) (citations omitted). “In other words, the FDCPA ‘is blind when it comes to distinguishing between plaintiffs who have suffered actual damages and those who have not.’” *Id. quoting Keele v. Wexler*, 149 F.3d 589, 593-594 (7th Cir. 1998).

**IV.
FACTS RELATED TO PLAINTIFFS KIM AND JOHN LIND**

14. On or before August 1, 2010, an obligation (the “Debt”) was allegedly incurred by Plaintiff Kim McLaughlin (now Kim Lind) to the original creditor, Chase Bank (“Creditor”).

15. The Debt arose out of a transaction in which money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family or household purposes and therefore it meets the definition of a “debt” under 15 U.S.C. § 1692a(5) and TEX. FIN. CODE § 392.001(2).

16. Creditor is a “creditor” as defined by 15 U.S.C. § 1692a(4).

17. In 2013, Kim McLaughlin married John Lind and subsequently changed her name to Kim

Lind.

18. Plaintiff Kim Lind's spouse, Plaintiff John Lind, is not a co-signer and is in no way associated with the Debt.

19. On or before February 10, 2016, the Debt was assigned to, purchased by, or transferred to Defendants for collection, or Defendants were employed by Creditor to collect the Debt.

20. Defendants meet the definition of a "debt collector" under TEX. FIN. CODE § 392.001(6) and 15 U.S.C. § 1692a(6).

21. Defendants contend that the Debt is in default.

22. On or about February 10, 2016, Defendants called Plaintiff John Lind on his cell phone in an attempt to collect the Debt.

23. Plaintiff John Lind believes that this call was initiated by an autodialer because there was a pause/silence after he answered the call and prior to him hearing someone on the line.

24. On this phone call, Defendants failed to identify themselves as debt collectors. Instead, Defendants stated on the call that a package needed to be delivered late in the day to John Lind. John was told to call a different number (844-287-9789 – the "shipping department") to update his address so that the package could be shipped to the current address.

25. This phone call meets the definition of "debt collection" under TEX. FIN. CODE § 392.001(5) and the definition of "communication" as defined by 15 U.S.C. §1692a(2).

26. In placing this phone call, Defendants engaged in "communications" as defined by 15 U.S.C. § 1692(a)(2).

27. Plaintiff Kim Lind's spouse, Plaintiff John Lind, returned a call to Defendants as requested. During that conversation, Defendants disclosed the details about the Debt to Plaintiff John Lind.

28. Moreover, Defendants falsely stated to Plaintiff John Lind that it was attempting to reach

Plaintiffs to serve them with legal documents. In fact, Defendants at that time had not – and to date have not – filed a legal action against either Plaintiff.

29. As of February 10, 2016, more than four years had elapsed since the last payment or activity on the Debt that was the subject of the call.

30. Defendants failed to inform the Plaintiffs that should they pay on the debt, this would have the effect of resetting and restarting the statute of limitations applicable to the collection of the debt.

31. The phone call did not inform the Plaintiffs that should the statute of limitation reset, that Defendants, or any subsequent buyer of the alleged debt, may have the right to commence legal action, which otherwise would have been time barred.

32. Defendants could have taken the steps necessary to bring their actions within compliance with the TCPA, the FDCPA, the Rosenthal Act and the TDCA, but neglected to do so and failed to adequately review their actions to ensure compliance with the law.

33. The telephone number Defendants called was assigned to a cellular telephone service.

34. The telephone call constituted a call that was not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(1).

35. The above unlawful practices are Defendants' routine procedures for collecting consumer debts.

36. The collection or attempted collection of consumer debts in the aforementioned manner violates both state and federal collection laws.

V. CLASS ALLEGATIONS

37. This action is maintained as a class action on behalf of the following described classes (hereinafter collectively referred to as “the Classes”):

- a. SOL Class: All persons who reside in Texas and from whom, on or after November 7, 2014, Defendants sought to collect, or did collect, a time-barred consumer debt and to whom Defendants communicated an offer of payment terms which communication also failed to inform the person that the statute of limitations would reset and restart upon partial payment.
- b. TCPA Class: All persons who reside within the United States and who were called by Defendants from November 7, 2012 through the present, in an attempt to collect a debt, using an automatic telephone dialing system, where the call was placed to the person's cellular telephone number that Defendants did not obtain either from a creditor or directly from the person himself or herself and/or where the call was placed to the person's phone number after the person had revoked prior express consent.
- c. FDCPA Class: All persons who reside in the United States and from whom, on or after November 7, 2015 Defendants sought to collect, or did collect, a consumer debt and to whom Defendants placed a telephone call.
- d. Rosenthal Act Class: All persons who reside in the United States and from whom, on or after November 7, 2015 Defendants sought to collect, or did collect, a consumer debt and to whom Defendants placed a telephone call.
- e. TDCA Class: All persons who reside in Texas and from whom, on or after November 7, 2014 Defendants sought to collect, or did collect, a consumer debt and to whom Defendants placed a telephone call.

Excluded from each of the above Classes are all employees, including, but not limited to, Judges, clerks and court staff and personnel, of the United States District Court, their spouses, and any minor children living in their households. Also excluded are employees of Defendants, their spouses, and any minor children living in their households. Also excluded are Class counsel and their employees, their spouses, and any minor children living in their households.

38. The unlawful actions of Defendants entitles Plaintiffs and each Class Member to actual and statutory damages as well as injunctive relief.

39. The members of the Classes for whose benefit this action is brought are so numerous that joinder of all Class Members is impracticable. The exact number of Class Members is unknown to Plaintiffs. However, the number of the Class Members is reasonably believed to be in the thousands, and they can be determined from records maintained by Defendants.

40. Plaintiffs will fairly and adequately protect the interests of each Class Member and have retained counsel experienced and capable in class action litigation and in the fields of debt collection and consumer law. Plaintiffs understand and appreciate their duty to each member of the Class under FED. R. CIV. P. RULE 23 and are committed to vigorously protecting the rights of absent Class Members.

41. Plaintiffs are asserting claims that are typical of the claims of each Class Member they seek to represent, in that Defendants engaged in the collection and/or attempted collection of debts from each Class Member they seek to represent in the same manner—and utilizing the same method—as Defendants utilized against Plaintiffs. All claims alleged on behalf of each Class Member flow from this conduct. Further, there is no conflict between Plaintiffs and any Class Member with respect to this action.

42. There is a well-defined community of interest in the questions of law and fact affecting the parties to be represented. Questions of law and fact arising out of Defendants' conduct are common to all Class Members, and such common issues of law and fact predominate over any questions affecting only individual Class Members. Issues of law and fact common to members of the SOL Class include, but are not limited to, the following:

- a. Whether Defendants are “debt collectors” as that term is defined by the Fair Debt Collection Practices Act;
- b. Whether Defendants' actions constitute a violation of 15 U.S.C.A. § 1692e(10);
- c. Whether Defendants' actions constitute a violation of 15 U.S.C.A. § 1692e(2)(A);
- d. Whether Defendants' failure to notify a consumer debtor that by making — or agreeing to make — partial payment that the statute of limitation applicable to the collection of the debt will be restarted is a violation of 15 U.S.C.A. § 1692e;
- e. Whether Defendants are liable for damages and the amount of such damages; and

- f. Whether Plaintiffs and FDCPA Class members are entitled to an award of attorneys' fees and costs.

42. Issues of law and fact common to members of the FDCPA class include, but are not limited to, the following:

- a. Whether Defendants are "debt collectors" as that term is defined by the Fair Debt Collection Practices Act;
- b. Whether Plaintiffs are "consumers" as that term is defined by the Fair Debt Collection Practices Act;
- c. Whether the debt that Defendants sought to collect was a "consumer debt" as defined by the Fair Debt Collection Practices Act;
- d. Whether the Plaintiffs were subjected to harassing calls;
- e. Whether Defendants' conduct violated the FDCPA by threatening to take action that could not be legally taken and/or that they had no intention of taking;
- f. Whether Defendants' conduct violated the FDCPA by communicating without consent with individuals other than Plaintiff Kim Lind, Plaintiff Kim Lind's Attorney or a credit bureau concerning Plaintiff Kim Lind's debt;
- g. Whether Defendants' conduct violated 15 U.S.C. 1692e(2)(A)&(B) by making false, deceptive, and misleading representations concerning the character, amount, or legal status of the Debt or any amount which may be collected or sought to be collected by a debt collector in connection with the collection of a debt;
- h. Whether Defendants' conduct violated 15 U.S.C. § 1692g(a) by failing to provide written notice to Plaintiffs of their rights, among other rights, to dispute the debt and to demand validation of the debt;
- i. Whether Defendants' conduct violated 15 U.S.C. § 1692b(1) when they communicated with third parties concerning Plaintiff Kim Lind's debt and failed to properly identify themselves and, when asked, failed to identify their employer;
- j. Whether Defendants' conduct violated 15 U.S.C. § 1692e(10) when they used a false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer;
- k. Whether Defendants' conduct violated 15 U.S.C. § 1692f when they used an unfair and unconscionable means to collect or attempt to collect a debt;

- l. Whether Defendants' conduct violated 15 U.S.C. § 1692e(14) when they used a business, company or organization name other than the true name of the debt collector's company name;
 - m. Whether Defendants engaged in behavior the natural consequences of which was to harass, oppress or abuse the Plaintiffs in connection with the collection of a debt, in violation of 15 U.S.C. § 1692(d);
 - n. Whether Defendants are liable for damages and the amount of such damages; and
 - o. Whether Plaintiffs and FDCPA Class members are entitled to an award of attorneys' fees and costs.
43. Issues of law and fact common to members of the TDCA class include, but are not limited to, the following:
- a. Whether Defendants are "debt collectors" as that term is defined by the Texas Debt Collection Act;
 - b. Whether Plaintiffs are "consumers" as defined by the TDCA;
 - c. Whether the debt that Defendants sought to collect was a "consumer debt" as defined by the TDCA;
 - d. Whether Defendants' actions constitute a violation of TEX. FIN. CODE § 392.304(a)(8);
 - e. Whether Defendants' actions constitute a violation of TEX. FIN. CODE § 392.304(a)(18);
 - f. Whether Defendants' actions constitute a violation of TEX. FIN. CODE § 392.304(a)(19);
 - g. Whether Defendants are liable for damages and the amount of such damages;
 - h. Whether Plaintiffs and Class Members are entitled to seek an injunction against Defendants to prevent or restrain further violations of the TDCA; and
 - i. Whether Defendants directly and proximately caused Plaintiffs and Class Members injury for which they are entitled to actual damages, statutory damages, and reasonable attorneys' fees and costs, declaratory relief, injunctive relief, and other legal and equitable relief.

43. Issues of law and fact common to members of the TCPA class include, but are not limited to, the following:

- a. Whether Defendants made calls to Plaintiffs and Class members' cellular telephones using an automatic telephone dialing system;
- b. Whether such practice violates the TCPA;
- c. Whether Defendants' conduct was knowing and willful;
- d. Which services or processes Defendants employed to obtain class members' cellular telephone numbers;
- e. Which technologies or services were available to Defendant to enable it to differentiate between wireless numbers and wireline numbers;
- f. Whether Defendants are liable for damages and the amount of such damages; and
- g. Whether Defendant should be enjoined from engaging in such conduct in the future.

44. Issues of law and fact common to members of the Rosenthal Act class include, but are not limited to, the following:

- a. Whether Defendants engaged in unfair and deceptive acts and practices in the collection of consumer debts;
- b. Whether Defendants are "debt collectors" as that term is defined by the Rosenthal Act;
- c. Whether Defendants violated the Rosenthal Act by failing to comply with the provisions of FDCPA; and
- d. Whether Defendant is liable for damages and the amount of such damages.

45. The relief sought by each Class Member is common to the entirety of each respective class.

46. Defendants have acted on grounds generally applicable to each member of each of the Classes, thereby making formal declaratory relief or corresponding injunctive relief appropriate

with respect to the Classes as a whole. Therefore, certification pursuant to FED. R. CIV. P. 23(b)(2) is warranted.

47. For each of the Classes, this action is properly maintained as a class action in that the prosecution of separate actions by individual members would create a risk of adjudication with respect to individual members which would establish incompatible standards of conduct for Defendants.

48. This action is properly maintained as a class action in that the prosecution of separate actions by Class Members would create a risk of adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interests.

49. A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein given that, among other things:

- a. significant economies of time, effort, and expense will inure to the benefit of the Court and the parties in litigating the common issues on a class-wide instead of a repetitive individual basis;
- b. the size of the individual damages claims of most Class Members is too small to make individual litigation an economically viable alternative, such that few Class Members have any interest in individually controlling the prosecution of a separate action;
- c. without the representation provided by Plaintiffs herein, few, if any, Class Members will receive legal representation or redress for their injuries;
- d. class treatment is required for optimal deterrence;
- e. despite the relatively small size of the claims of many individual Class Members, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a cost effective basis, especially when compared with repetitive individual litigation;

- f. no unusual difficulties are likely to be encountered in the management of this class action;
 - g. absent a class action, Defendants' illegal conduct shall go unremedied and uncorrected; and
 - h. absent a class action, the members of the class will not receive compensation and will continue to be subjected to Defendants' illegal conduct.
50. Concentrating this litigation in one forum would aid judicial economy and efficiency, promote parity among the claims of the individual members of the class, and result in judicial consistency.

**VI.
CAUSES OF ACTION**

**COUNT ONE
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT,
15 U.S.C. § 1692 *et seq.***

51. Plaintiffs repeat, reiterate and incorporate the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.
52. Defendants are each debt collectors as defined by the FDCPA. *See* 15 U.S.C. § 1692a(6).
53. Plaintiffs are consumers as defined by the FDCPA. *See* 15 U.S.C. § 1692a(3).
54. The debt that Defendants sought to collect was a consumer debt as defined by the FDCPA. *See* 15 U.S.C. § 1692a(5).
55. Defendants' conduct violated 15 U.S.C. § 1692e in that Defendants attempted to collect a debt using false, deceptive, or misleading representation or means in connection with the collection of the debt.
56. Defendants' conduct violated 15 U.S.C. § 1692e(5) in that Defendants threatened to take action that could not be legally taken and/or it had no intention of taking.

57. Defendants' conduct violated 15 U.S.C. § 1692b(2) and 15 U.S.C. § 1692c(b) in that Defendants communicated without consent with individuals other than Plaintiff Kim Lind, Plaintiff Kim Lind's attorney or a credit bureau concerning Plaintiff Kim Lind's debt.

58. Defendants' conduct violated 15 U.S.C. § 1692e(10) in that Defendants used false representation or deceptive means in an attempt to collect a debt, when it failed to notify Plaintiffs that by making a payment, the statute of limitations would restart.

59. Defendants' conduct violated 15 U.S.C. 1692e(2)(A)&(B) in that Defendants made false, deceptive, and misleading representations concerning the character, amount, or legal status of the Debt or any amount which may be collected or sought to be collected by a debt collector in connection with the collection of a debt.

60. Defendants' conduct violated 15 U.S.C. § 1692g(a) in that Defendants failed to provide written notice to Plaintiffs of their rights, among other rights, to dispute the debt and to demand validation of the debt.

61. Defendants' conduct violated 15 U.S.C. § 1692b(1) in that Defendants communicated with third parties concerning Plaintiff Kim Lind's debt and failed to properly identify themselves and, when asked, failed to identify their employer.

62. Defendants' conduct violated 15 U.S.C. § 1692e(10) in that Defendants used a false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer.

63. Defendants' conduct violated 15 U.S.C. § 1692f in that Defendants used an unfair and unconscionable means to collect or attempt to collect a debt.

64. Defendants' conduct violated 15 U.S.C. § 1692e(14) in that Defendants used a business, company or organization name other than the true name of the debt collector's company name.

65. The Defendants engaged in behavior the natural consequences of which was to harass, oppress or abuse the Plaintiffs in connection with the collection of a debt, in violation of 15 U.S.C. § 1692(d).

66. Congress enacted the FDCPA to prevent real harm. Under the FDCPA, the Plaintiffs have a statutory right to not be subjected to harassing calls. The harm that Plaintiffs have alleged is exactly the harm Congress targeted by enacting the FDCPA. Congress “elevat[ed]” these “concrete, de facto” injuries “to the status of legally cognizable injuries.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016). Its aim was “to eliminate abusive debt collection practices by debt collectors.” 15 U.S.C. § 1692(e).

67. As a result of Defendants’ violations of 15 U.S.C. § 1692, *et seq.*, Plaintiffs and Class members are each entitled to actual and statutory damages.

68. Plaintiffs and FDCPA Class members are also entitled to an award of attorneys’ fees and costs.

COUNT TWO
**VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT,
CAL. FIN. CODE § 1788, *et seq.***

69. Plaintiffs repeat, reiterate and incorporate the allegations contained in the paragraphs above herein with the same force and effect as if the same were set forth at length herein.

70. The Rosenthal Fair Debt Collection Practices Act, California Civil Code section 1788 *et seq.* (“Rosenthal Act”) prohibits unfair and deceptive acts and practices in the collection of consumer debts.

71. The Defendants, in the regular course of their business, engage in debt collection and are “debt collectors” as defined by CAL. CIV. CODE § 1788.2(c).

72. The Defendants failed to comply with the provisions of 15 U.S.C. § 1692, *et seq.*, in violation of CAL. CIV. CODE § 1788.13(e).

73. The Defendants did not comply with the provisions of Title 15, Section 1692 of the United States Code, in violation of CAL. CIV. CODE § 1788.17.

74. The Plaintiffs are entitled to damages as a result of Defendants' violations.

COUNT THREE
VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT,
TEX. FIN. CODE § 392.001, *et seq.*

75. Plaintiffs repeat, reiterate and incorporate the allegations contained in the paragraphs above herein with the same force and effect as if the same were set forth at length herein.

76. The acts of Defendants constitute violations of the TDCA. *See* TEX. FIN. CODE § 392.001 *et seq.*

77. Defendants are "debt collectors" as defined by the TDCA. *See* TEX. FIN. CODE §§ 392.001(6).

78. Plaintiffs are "consumers" as defined by the TDCA. *See* TEX. FIN. CODE § 392.001(1).

79. The debt that Defendants sought to collect was a consumer debt as defined by the TDCA. *See* TEX. FIN. CODE § 392.001(2).

80. The TDCA limits the rights of debt collectors in an effort to protect the rights of consumers.

81. Specifically, TEX. FIN. CODE § 392.304(a)(8) states, in pertinent part, that "a debt collector may not use a fraudulent, deceptive, or misleading representation that employs . . . misrepresenting the character, extent, or amount of a consumer debt."

82. Defendants' conduct violated TEX. FIN. CODE § 392.304(a)(8) in that Defendants used a deceptive and misleading representation in their attempts to collect a debt when they failed to notify Plaintiffs that by making a payment, the statute of limitations would restart.

83. Defendants' conduct violated TEX. FIN. CODE § 392.304(a)(8) when Defendants misrepresented their identity in their attempts to collect a debt.

84. TEX. FIN. CODE § 392.304(a)(19) prohibits the use of any "deceptive means to collect a debt." Defendants' conduct violated TEX. FIN. CODE § 392.304(a)(19) in that Defendants' failure to notify Plaintiffs that by making a partial payment, the statute of limitations would restart was a deceptive means to collect the Debt.

85. As a result of Defendants' violations of the TDCA, Plaintiffs and Class Members are entitled to and do seek an injunction against Defendants to prevent or restrain further violations. TEX. FIN. CODE § 392.403(1).

86. Defendants' described actions in violation of the Texas Debt Collection Act have directly and proximately caused Plaintiffs and Class Members injury for which they are entitled to actual damages, statutory damages and reasonable attorneys' fees and costs, declaratory relief, injunctive relief and other legal and equitable relief pleaded herein.

COUNT FOUR
**NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT 47 U.S.C.A. § 227 ET SEQ.**

87. Plaintiffs repeat, reiterate and incorporate the allegations contained in the paragraphs above herein with the same force and effect as if the same were set forth at length herein.

88. The Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., restricts the making of telephone calls to cellular phones for commercial purposes that are made using "any automatic telephone dialing system." TCPA § 227(b)(A)(iii).

89. Defendants made telephone calls to Plaintiff John Lind's cell phone using an automatic telephone dialing service without consent, which was prohibited by the TCPA.

90. Defendants negligently disregarded the TCPA in using automated telephone dialing equipment to call Plaintiff John Lind's and the TCPA class' cellular telephones without express consent.

91. The foregoing acts and omissions of Defendants constitutes numerous and multiple negligent violations of the TCPA, including but not limited to each of the above cited provisions of 47 U.S.C. § 227 *et seq.*

92. Congress enacted the TCPA to prevent real harm. Congress found that “automated or pre-recorded calls are a nuisance and an invasion of privacy, regardless of the type of call” and decided that “banning” such calls made without consent was “the only effective means of protecting telephone consumers from this nuisance and privacy invasion.”⁵

93. Defendants' phone calls harmed Plaintiff John Lind by causing the very harm that Congress sought to prevent—a “nuisance and invasion of privacy.”

94. Defendants' phone call harmed Plaintiff John Lind by trespassing upon and interfering with Plaintiff's rights and interests in Plaintiff's cellular telephone and cellular telephone line.

95. Defendants' phone call harmed Plaintiff John Lind by intruding upon his seclusion.

96. Defendants' phone call harmed Plaintiff by causing Plaintiff aggravation and annoyance.

97. Defendants' phone call harmed Plaintiff John Lind by wasting Plaintiffs' time.

98. Defendants' phone call harmed Plaintiff John Lind by using minutes allocated to him by his cellular telephone service provider.

⁵ Pub. L. No. 102-243, §§ 2(10-13) (Dec. 20, 1991), *codified at* 47 U.S.C. § 227. *See also* Mims v. Arrow Fin. Servs., L.L.C., 132 S. Ct. 740, 744, 181 L. Ed. 2d 881 (2012) (“The Act bans certain practices invasive of privacy”).

99. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq., Plaintiffs and TCPA Class members are entitled to an award of \$500.00 in statutory damages for each and every call in violation of the statute pursuant to 47 U.S.C. § 227(b)(3)(B).

**VI.
VICARIOUS LIABILITY**

100. At all times relevant hereto, the individual debt collectors who contacted or attempted to contact Plaintiffs and the Class Members were employed by Defendants and were working in the course and scope of their employment with Defendants. Defendants had the right to control their activities. Therefore, Defendants are liable for their actions, inactions, and conduct which violated the Rosenthal Act, the TCPA, the FDCPA and TDCA and proximately caused damage to Plaintiffs and each member of the classes as described herein.

**VII.
JURY REQUEST**

101. Plaintiffs request that this matter be tried before a jury.

WHEREFORE, Plaintiffs and the Class Members pray that the Court enter judgment in their favor against Defendants as follows:

- a. Enter an order certifying this action as a class action pursuant to FED. R. CIV. P. 23(b)(2) and/or 23(b)(3).
- b. Declaring:
 - i. Defendants' actions violated the Rosenthal Act;
 - ii. Defendants' actions violated the TCPA;
 - iii. Defendants' actions violated the FDCPA; and
 - iv. Defendants' actions violated the TDCA;
- c. Enjoin Defendants from committing further violations of the Rosenthal Act, the TCPA, the FDCPA and the TDCA;
- d. Awarding Plaintiffs and Class Members actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the Defendants;

- e. Awarding Plaintiffs and Class Members statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) against the Defendants;
- f. Awarding Plaintiffs and Class Members actual damages pursuant to CAL. CIV. CODE § 1788.30(a);
- g. Awarding Plaintiffs and Class Members statutory damages of \$1,000.00 for knowingly and willfully committing violations pursuant to CAL. CIV. CODE § 1788.30(b);
- h. Awarding Plaintiffs and Class Members actual and statutory damages and penalties under the TCPA and the TDCA;
- i. Awarding Plaintiffs and Class Members reasonable attorneys' fees, expenses and costs pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendants;
- j. Awarding Plaintiffs and Class Members punitive damages; and
- k. Granting such other relief that equity and the law deems appropriate.

Dated: November 7, 2016

Respectfully submitted,

By: /s/ Walt D. Roper

Walt D. Roper

TX State Bar No. 00786208

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ATTORNEY FOR PLAINTIFF

CIVIL COVER SHEET

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

JOHN AND KIM LIND, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Walt D. Roper, THE ROPER FIRM, P.C. 3001 Knox Street, Suite 405, Dallas, TX 75205 Telephone: 214-420-4520

DEFENDANTS

BERKSHIRE AND LEWIS LITIGATION, FISHER & BURNS FINANCIAL, LLC AND BERKS & LEWIS LITIGATION GROUP, LLC

County of Residence of First Listed Defendant Orange County CA (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)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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 (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C.A § 227,et seq.,15 U.S.C.A. §1692,et seq.,CAL. FIN. CODE § 1788,et seq.,TEX. FIN. CODE § 392.001 Brief description of cause: Defendants violated above statutes in an attempt to collect on a debt

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/07/2016 SIGNATURE OF ATTORNEY OF RECORD /s/Walt D. Roper

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Three Debt Collection Agencies Hit with FDCPA Class Action](#)
