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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 Terri Stivers, *on behalf of herself and all* Case No.
12 *others similarly situated,*)
13) **CLASS COMPLAINT AND TRIAL BY**
14 Plaintiff,) **JURY DEMAND**
15)
16 vs.)
17)
18 Monarch Recovery Management, Inc.,)
19)
20 Defendants.)

21 **NATURE OF ACTION**

22 1. Plaintiff Terri Stivers (“Plaintiff”) brings this putative class action against
23 Defendant Monarch Recovery Management, Inc. (“Defendant”) pursuant to the Fair Debt
24 Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Rosenthal Fair Debt
25 Collection Practices Act (“RFDCPA”), Cal. Civ. Code § 1788 *et seq.*, on behalf of herself
26 and all others similarly situated.

27 **JURISDICTION, STANDING, AND VENUE**

28 2. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d), 28 U.S.C. §
1367, and 28 U.S.C. § 1331.

1 3. Plaintiff has Article III standing to bring this action, as it seeks to redress
2 conduct by Defendant that caused Plaintiff to suffer intangible harms, which Congress has
3 made legally cognizable in passing the FDCPA. *See Spokeo, Inc. v. Robins*, 136 S. Ct.
4 1540, 1549, 194 L. Ed. 2d 635 (2016), *as revised* (May 24, 2016) (Congress is “well
5 positioned to identify intangible harms that meet minimum Article III requirements,” and
6 thus “may ‘elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries
7 that were previously inadequate in law.’” (quoting *Lujan v. Defs of Wildlife*, 504 U.S. 555,
8 578 (1992)); *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 WL 3671467,
9 at *3 (N.D. Ill. July 11, 2016) (“Without the protections of the FDCPA, Congress
10 determined, the ‘[e]xisting laws and procedures for redressing these injuries are inadequate
11 to protect consumers.’” (quoting 15 U.S.C. § 1692(b)).

12
13
14 4. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the
15 acts and transactions giving rise to Plaintiff’s action occurred in this district, where Plaintiff
16 resides in this district, and where Defendant transacts business in this district.

17
18
19 **THE FAIR DEBT COLLECTION PRACTICES ACT**

20
21 5. Congress enacted the FDCPA in order to eliminate “abusive debt collection
22 practices by debt collectors [and] to insure that those debt collectors who refrain from using
23 abusive debt collection practices are not competitively disadvantaged.” *Clark v. Capital*
24 *Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1179-80 (9th Cir. 2006) (citing 15 U.S.C.
25 § 1692(e)).

1 6. To protect consumers and ensure compliance by debt collectors, “the FDCPA
2 is a strict liability statute.” *McCullough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d
3 939, 948 (9th Cir. 2011).
4

5 7. Strict liability enhances “the remedial nature of the statute,” and courts are
6 “to interpret it liberally” to protect consumers. *Clark*, 460 F.3d at 1176.
7

8 8. In addition, by making available to prevailing consumers both statutory
9 damages and attorneys’ fees, Congress “clearly intended that private enforcement actions
10 would be the primary enforcement tool of the Act.” *Baker v. G.C. Servs. Corp.*, 677 F.2d
11 775, 780-81 (9th Cir. 1982); *see also Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109,
12 1118 (9th Cir. 2014).
13

14 9. Violations of the FDCPA are assessed under the least sophisticated consumer
15 standard which is “‘designed to protect consumers of below average sophistication or
16 intelligence,’ or those who are ‘uninformed or naïve,’ particularly when those individuals
17 are targeted by debt collectors.” *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1061
18 (9th Cir. 2011) (quoting *Duffy v. Landberg*, 215 F.3d 871, 874-75 (8th Cir. 2000)).
19
20

21 10. “An FDCPA Plaintiff need not even have actually been misled or deceived
22 by the debt collector’s representation; instead, liability depends on whether the
23 *hypothetical* ‘least sophisticated debtor’ likely would be misled.” *Tourgeman*, 755 F.3d at
24 1117-18 (emphasis in original).
25

26 11. “[B]ecause the FDCPA is a remedial statute aimed at curbing what Congress
27 considered to be an industry-wide pattern of and propensity towards abusing debtors, it is
28 logical for debt collectors—repeat players likely to be acquainted with the legal standards

1 governing their industry—to bear the brunt of the risk.” *Clark*, 460 F.3d at 1171-72; *see*
2 *also FTC v. Colgate–Palmolive Co.*, 380 U.S. 374, 393 (1965) (“[I]t does not seem unfair
3 to require that one who deliberately goes perilously close to an area of proscribed conduct
4 shall take the risk that he may cross the line.”) (internal quotations omitted).

6 **THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

7
8 12. “California has adopted a state version of the FDCPA, called the Rosenthal
9 Act.” *Riggs v. Prober & Raphael*, 681 F.3d 1097, 1100 (9th Cir. 2012).

10 13. Like the FDCPA, the purpose of the RFDCPA is to “prohibit debt collectors
11 from engaging in unfair or deceptive acts or practices in the collection of consumer debts
12 and to require debtors to act fairly in entering into and honoring such debts, as specified in
13 this title.” Cal. Civ. Code § 1788.1(b).

14
15 14. “The Rosenthal Act mimics or incorporates by reference the FDCPA’s
16 requirements . . . and makes available the FDCPA’s remedies for violations.” *Riggs*, 681
17 F.3d at 1100.

18
19 15. “[A] plaintiff who recovers under the FDCPA is entitled to damages under
20 the corresponding section of the RFDCPA.” *Costa v. Nat’l Action Fin. Servs.*, 634 F. Supp.
21 2d 1069, 1077 (E.D. Cal. 2007).

22 **PARTIES**

23
24 16. Plaintiff is a natural person who at all relevant times resided in the State of
25 California, County of Fresno, and City of Fresno.

26
27 17. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

28 18. Plaintiff is a “person” as defined by Cal. Civ. Code § 1788.2(g).

1 All persons in California, to whom Defendant sent an initial written
2 communication based upon the Template, within one year before the date of
3 this complaint, in connection with the collection of a consumer debt.

4 37. The proposed class specifically excludes the United States of America, the
5 State of California, counsel for the parties, the presiding United States District Court
6 Judge, the Judges of the United States Court of Appeals for the Ninth Circuit, and the
7 Justices of the United States Supreme Court, all officers and agents of Defendant, and all
8 persons related to within the third degree of consanguinity or affection to any of the
9 foregoing persons.
10

11 38. The class is averred to be so numerous that joinder of members is
12 impracticable.
13

14 39. The exact number of class members is unknown to Plaintiff at this time and
15 can be ascertained only through appropriate discovery.
16

17 40. The class is ascertainable in that the names and addresses of all class
18 members can be identified in business records maintained by Defendant.
19

20 41. There exists a well-defined community of interest in the questions of law and
21 fact involved that affect the parties to be represented. These common questions of law and
22 fact predominate over questions that may affect individual class members. Such issues
23 include, but are not limited to: (a) the existence of Defendant's identical conduct particular
24 to the matters at issue; (b) Defendant's violations of the FDCPA and RFDCPA; (c) the
25 availability of statutory penalties; and (d) attorneys' fees and costs.
26

27 42. Plaintiff's claims are typical of those of the class she seeks to represent.
28

1 43. The claims of Plaintiff and of the class originate from the same conduct,
2 practice, and procedure on the part of Defendant. Thus, if brought and prosecuted
3 individually, the claims of the members of the class would require proof of the same
4 material and substantive facts.
5

6 44. Plaintiff possesses the same interests and has suffered the same injuries as
7 each class member. Plaintiff asserts identical claims and seeks identical relief on behalf of
8 the unnamed class members.
9

10 45. Plaintiff will fairly and adequately protect the interests of the class and has
11 no interests adverse to or which directly and irrevocably conflict with the interests of other
12 members of the class.
13

14 46. Plaintiff is willing and prepared to serve this Court and the proposed class.
15

16 47. The interests of Plaintiff are co-extensive with and not antagonistic to those
17 of the absent class members.

18 48. Plaintiff has retained the services of counsel who are experienced in
19 consumer protection claims, as well as complex class action litigation, will adequately
20 prosecute this action, and will assert, protect and otherwise represent Plaintiff and all absent
21 class members.
22

23 49. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) and
24 23(b)(1)(B). The prosecution of separate actions by individual members of the class would,
25 as a practical matter, be dispositive of the interests of other members of the class who are
26 not parties to the action or could substantially impair or impede their ability to protect their
27 interests.
28

1 50. The prosecution of separate actions by individual members of the class would
2 create a risk of inconsistent or varying adjudications with respect to individual members of
3 the class, which would establish incompatible standards of conduct for the parties opposing
4 the classes. Such incompatible standards of conduct and varying adjudications, on what
5 would necessarily be the same essential facts, proof and legal theories, would also create
6 and allow the existence of inconsistent and incompatible rights within the class.
7
8

9 51. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) in that
10 Defendant has acted or refused to act on grounds generally applicable to the class, making
11 final declaratory or injunctive relief appropriate.
12

13 52. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) in that the
14 questions of law and fact that are common to members of the class predominate over any
15 questions affecting only individual members.
16

17 53. Moreover, a class action is superior to other methods for the fair and efficient
18 adjudication of the controversies raised in this Complaint in that: (a) individual claims by
19 the class members will be impracticable as the costs of pursuit would far exceed what any
20 one plaintiff or class member has at stake; (b) as a result, very little litigation has
21 commenced over the controversies alleged in this Complaint and individual members are
22 unlikely to have an interest in prosecuting and controlling separate individual actions; and
23 (c) the concentration of litigation of these claims in one forum will achieve efficiency and
24 promote judicial economy.
25
26
27
28

COUNT I
VIOLATION OF 15 U.S.C. § 1692g(a)(3)

1
2
3 54. Plaintiffs repeat and re-allege each factual allegation above.

4 55. A key provision of the FDCPA is § 1692g, which requires a debt collector to send,
5 within five days of its initial communication with a consumer, a written notice which provides
6 information regarding the debt and informs the consumer of his or her right to dispute the validity
7 of the debt, and/or request the name and address of the original creditor, within 30 days of receipt
8 of the notice. *See* 15 U.S.C. § 1692g(a).

9
10 56. Congress adopted “the debt validation provisions of section 1692g” to guarantee
11 that consumers would receive “adequate notice” of their rights under the FDCPA. *Wilson v.*
12 *Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000) (citing *Miller v. Payco–General Am. Credits,*
13 *Inc.*, 943 F.2d 482, 484 (4th Cir. 1991)).

14
15 57. This validation requirement is a “significant feature” of the law that aimed to
16 “eliminate the recurring problem of debt collectors dunning the wrong person or attempting to
17 collect debts which the consumer has already paid.” *See Hernandez v. Williams, Zinman &*
18 *Parham PC*, 829 F.3d 1068, 1070 (9th Cir. 2016) (citing S. Rep. No. 95-382, at 4 (1977)).

19
20 58. “Sections 1692g(a)(4), 1692g(a)(5), and 1692g(b) explicitly require written
21 communication, whereas section 1692g(a)(3) plainly does not.” *Clark v. Absolute Collection*
22 *Service, Inc.*, 741 F.3d 487, 490 (4th Cir. 2014).

23
24 59. “The plain language of subsection (a)(3) indicates that disputes need not be made
25 in writing” *Camacho v. Bridgeport Fin. Inc.*, 430 F.3d 1078, 1082 (9th Cir. 2005).

1 60. Defendant violated 15 U.S.C. § 1692g(a)(3) by falsely representing that any
2 dispute must be made *in writing* in order to prevent Defendant from assuming the validity
3 of the Debt.
4

5 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 6 a) Determining that this action is a proper class action, certifying Plaintiff as a
7 class representative under Rule 23 of the Federal Rules of Civil Procedure,
8 and designating this Complaint the operable complaint for class purposes;
9
10 b) Adjudging that Defendant violated 15 U.S.C. § 1692g(a)(3) with respect to
11 Plaintiff and the class she seeks to represent;
12
13 c) Awarding Plaintiff and the class she seeks to represent actual damages
14 pursuant to 15 U.S.C. § 1692k(a)(1);
15
16 d) Awarding Plaintiff such additional damages as the Court may allow in the
17 amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);
18
19 e) Awarding all other class members such amount as the Court may allow,
20 without regard to a minimum individual recovery, not to exceed the lesser of
21 \$500,000 or one percent of the net worth of the debt collector, pursuant to 15
22 U.S.C. § 1692k(a)(2)(B)(ii);
23
24 f) Awarding Plaintiff and the class she seeks to represent, reasonable attorneys'
25 fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and
26 Rule 23;
27
28 g) Awarding Plaintiff and the class she seeks to represent, pre-judgment and
post-judgment interest as permissible by law; and

1 h) Awarding such other and further relief as the Court may deem proper.

2 **COUNT II**
3 **VIOLATION OF CAL. CIV. CODE § 1788.17**

4 61. Plaintiff repeats and re-alleges each factual allegation above.

5 62. A debt collector violates Cal. Civ. Code § 1788.17 by failing to comply with
6 §§ 1692b-1692j of the FDCPA.

7 63. Defendant violated 15 U.S.C. § 1692g(a)(3) by falsely representing that any
8 dispute must be made *in writing* in order to prevent Defendant from assuming the validity
9 of the Debt.
10

11 64. By failing to comply with the FDCPA as detailed above, Defendant violated
12 Cal. Civ. Code § 1788.17.
13

14 WHEREFORE, Plaintiff prays for relief and judgment, as follows:
15

16 a) Determining that this action is a proper class action, certifying Plaintiff as a
17 class representative under Rule 23 of the Federal Rules of Civil Procedure,
18 and designating this Complaint the operable complaint for class purposes;

19 b) Adjudging that Defendant violated Cal. Civ. Code § 1788.17 with respect to
20 Plaintiff and the class she seeks to represent;
21

22 c) Awarding Plaintiff and the class she seeks to represent actual damages
23 pursuant to Cal. Civ. Code § 1788.30(a), Cal. Civ. Code § 1788.17, and 15
24 U.S.C. § 1692k(a)(1);
25

26 d) Awarding Plaintiff such additional damages as the Court may allow in the
27 amount of \$1,000, pursuant to Cal. Civ. Code § 1788.30(b);
28

- 1 e) Awarding Plaintiff such additional damages as the Court may allow in the
2 amount of \$1,000, pursuant to Cal. Civ. Code § 1788.17 and 15 U.S.C. §
3 1692k(a)(1);
4
5 f) Awarding all other class members such amount as the Court may allow,
6 without regard to a minimum individual recovery, not to exceed the lesser of
7 \$500,000 or one percent of the net worth of the debt collector, pursuant to
8 Cal. Civ. Code § 1788.17 and 15 U.S.C. § 1692k(a)(2)(B)(ii);
9
10 g) Awarding Plaintiff and the class she seeks to represent, reasonable attorneys'
11 fees and costs incurred in this action pursuant to Cal. Civ. Code § 1788.30(c),
12 15 U.S.C. § 1692k(a)(3), and Rule 23;
13
14 h) Awarding Plaintiff and the class she seeks to represent, pre-judgment and
15 post-judgment interest as permissible by law; and
16
17 i) Awarding such other and further relief as the Court may deem proper.

18 **TRIAL BY JURY**

19 65. Plaintiff is entitled to and hereby demands a trial by jury.
20

21 Dated: August 23, 2019

22 Respectfully submitted,

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