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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Melissa Reyes, Deputy Clerk

Attorney for Plaintiff:
FARID MASHIRI

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

FARID MASHIRI

Case No. 37-2014-00024387-CU-PO-CTL

Plaintiff,

vs.

COMPLAINT FOR:

- 1. VIOLATION OF THE RFDCPA; and
2. VIOLATION OF THE UCL**

KAISER FOUNDATION HEALTH
PLAN, INC. and DOES 1 through 25

Defendants.

Plaintiff FARID MASHIRI alleges as follows:

I.
INTRODUCTION

1. Plaintiff, FARID MASHIRI (hereinafter referred to as "Plaintiff"), brings this lawsuit against Defendant KAISER FOUNDATION HEALTH PLAN, INC. (hereinafter "KAISER"), for violations of the Rosenthal Fair Debt Collections Practice Act ("RFDCPA") and California Business and Profession Code section 17200 et seq. ("UCL"). Accordingly, PLAINTIFF brings this action to enjoin preliminary and permanently Defendant's unlawful business practice and seek consumer restitution, civil penalties, statutory damages, attorneys' fees and costs, and other equitable relief the Court deems appropriate.

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II.
PARTIES

2. Plaintiff is, and at all times mentioned herein was, an individual, residing in the County of San Diego, State of California.

3. Plaintiff is a consumer as defined by 15 U.S.C. section 1692a(3). Furthermore, PLAINTIFF is a debtor as that term is defined by California Civil Code §1788.2(h).

4. Plaintiff is informed and believes, and thereupon alleges, that Defendant KAISER is, and at all times mentioned herein was, a corporation, who was conducting and engaging in business in the County of San Diego, California.

5. Plaintiff is informed and believes, and thereupon alleges, that Defendant KAISER is a debt collector who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due. KAISER is a debt collector as defined under California law.

6. Plaintiff is ignorant of the true names and capacities of those Defendants sued herein as DOES 1 through 25, and therefore sues those Defendants by such fictitious names. PLAINTIFF will amend this complaint to allege their true names and capacities when such names and responsibilities are ascertained. Plaintiff is informed and believes and on that basis alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences alleged in this complaint, and that Plaintiff's claims alleged in this complaint were proximately caused by such Defendants.

7. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned each of the Defendants was the agent, servant, employee, or partner of each of the remaining defendants and, in committing the acts and omissions hereinafter alleged, was acting

1 within the course and scope of such agency, employment, partnership, or other business
2 relationship, and were each responsible for the acts and omissions alleged in this complaint.

3
4 **III.**
JURISDICTION AND VENUE

5 8. Jurisdiction of this Court arises under California Code of Civil Procedure 410.10 *et.*
6 *seq.* This Court also has jurisdiction under 15 U.S.C. section 1692k(d).

7 9. All of the actions and/or omissions of Defendants, as hereinafter alleged and giving
8 rise to this lawsuit, occurred/or the contract was to be performed, within this judicial district.
9 Therefore, this is the proper court for trial in this action.
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11 **IV.**
RELEVANT FACTS

12 10. On February 18, 2013, Plaintiff filed a lawsuit against KAISER, COLLECTION
13 CONSULTANTS OF CALIFORNIA, and LEE BYRD for violations of state and federal unfair
14 debt collection laws. This lawsuit is currently ongoing.
15

16 11. KAISER knew that Plaintiff was represented by an attorney, but continued to
17 communicate with Plaintiff in an attempt to collect a debt. KAISER sent out a written demand
18 for payment on July 23, 2013 and again a demand for payment on August 24, 2013. These facts
19 occurred after Plaintiff's first lawsuit was filed, and therefore, a Plaintiff may bring a second
20 lawsuit based on events that occurred after the filing of a complaint in the first lawsuit. (*Adams v.*
21 *California Dept. of Health Services* (9th Cir. 2007) 487 F.3d 684, 693.)
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23 12. Plaintiff alleges that as "Debt Collectors," Defendants are fully aware of California's
24 debt collection laws, including the RFDCPA and FDCPA, and further knew each of their
25 harassing communications were subject to Title 1.6C (RFDCPA) of the California Civil Code
26 and 15 U.S.C. section 1692 (FDCPA).
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1 13. Plaintiff alleges that Defendants knew each of their harassing communications were
2 willful and knowing violations of Title 1.6C (RFDCPA) of the California Civil Code and 15
3 U.S.C. section 1692 (FDCPA).

4 14. Plaintiff alleges that Defendants' harassing communications are part of an overall
5 unlawful business pattern and practice whereby they have knowingly, willfully, and intentionally
6 enterprised a profitable scheme through illegal collection activity.

7 15. Defendants are rarely, if ever, sued over such harassing communications, since very
8 few debtors are aware that their rights are being violated and/or very few attorneys are willing to
9 take on such cases. As such, Defendants are highly motivated to continue their harassing
10 communications since any claims paid out as a result of such wrongful conduct are minuscule
11 when compared to the overall profit generated from such illegal acts.

12 16. As a direct and proximate cause of Defendants' harassing communications,
13 PLAINTIFF, who has cancer, has incurred actual damages consisting of mental and emotional
14 distress, nervousness, grief, embarrassment, loss of sleep, anxiety, worry, mortification, shock,
15 humiliation, indignity, pain and suffering, and other injuries.

16 17. Plaintiff incurred out of pocket monetary damages for attorneys' fees and costs
17 incurred for services provided to protect Plaintiff under the RFDCPA and FDCPA.

18 18. Plaintiff incurred additional incidental actual damages including, but not limited to,
19 transportation and gasoline costs to the law firm, telephone call charges, copies, postage, and
20 other damages.

21 19. Defendants' harassing acts and violations of both federal and California law were so
22 willful, vexatious, outrageous, oppressive, and maliciously calculated enough, so as to warrant
23 statutory penalties and punitive damages as permitted by law.

V.
FIRST CAUSE OF ACTION

(Violations of the RFDCPA against KAISER and Does 1 through 25)

20. PLAINTIFF re-alleges paragraphs 1 through 19, above, as if fully set forth herein.

21. Any violation of the FDCPA is a violation of California Civil Code section 1788.17.

Stated differently, Civil Code section 1788.17 incorporates the FDCPA.

22. KAISER violated Civil Code section 1788.17 because it violated 15 U.S.C. section 1692c(a)(2) which states in part the following:

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt -

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer;

23. Defendant KAISER violated 15 U.S.C. section 1692c(a)(2) because it contacted PLAINTIFF in writing on July 23, 2013 and on August 24, 2013, in an attempt to collect a debt, knowing that Plaintiff was represented by an attorney regarding such debt.

24. Because Defendant KAISER violated 15 U.S.C. section 1692c(a)(2) it violated Civil Code section 1788.17.

25. The forgoing act(s) by Defendants were willful, knowing, intentional, persistent, frequent, and devious violations of the RFDCPA are sole and separate violations under California Civil Code section 1788.30(b), and trigger additional \$1,000.00 penalties for each violation against each defendant.

1 26. PLAINTIFF has suffered harm resulting from Defendants' actions, as heretofore
2 alleged, including but not limited to worry, emotional distress, anxiety, humiliation, and out-of-
3 pocket expenses to be proven at trial.

4 27. Plaintiff has incurred reasonable and necessary costs and attorneys' fees in the
5 preparation and prosecution of this action and seek reimbursement of his attorneys' fees and
6 costs pursuant California Civil Code sections 1788.30(c).
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8 **III.**
9 **SECOND CAUSE OF ACTION**

10 **(Violations of Business and Professions Code Section 17200 *et seq.* against all Defendants**
11 **on behalf of Plaintiff and the General Public)**

12 28. Plaintiff re-alleges paragraphs 1 through 27, above, as if fully set forth herein.

13 29. California Business and Professions Code section 17200 *et seq.* prohibits unfair,
14 unlawful, and fraudulent business practices.

15 30. Defendants have engaged in unfair competition as defined by the Business and
16 Professions Code section 17200, *et seq.*

17 31. Defendants' acts and practices as alleged herein are unfair because the utility of the
18 conduct is outweighed by the gravity of the harm it causes. Further, Defendants' conduct is
19 unfair because it offends established public policy or is immoral, unethical, oppressive,
20 unscrupulous, and substantially injurious to consumers. Moreover, as detailed above and below,
21 Defendants' conduct violates consumer protection laws, specifically the FDCPA and RFDCPA,
22 violates the spirits of the statutes, and otherwise significantly threatens or harms consumers.
23 Defendants' conduct has caused substantial injury, which was not reasonably avoidable by
24 PLAINTIFF and is not outweighed by countervailing benefits to consumers or to competition.
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26 32. Defendants actions constitute unlawful competition because they violated the
27 FDCPA and RFDCPA as described in more detail above.
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1 33. Plaintiff has suffered injury in fact and monetary damages as a direct and proximate
2 result of Defendants' actions.

3 34. Plaintiff seeks restitutionary relief pursuant to Business and Professions Code section
4 17203.

5 35. Defendants are engaging, have engaged, and there is a substantial likelihood that
6 they will continue to engage in this unlawful and unfair competition unless enjoined by this
7 Court. As such, pursuant to Business and Professions Code section 17203, Defendants should be
8 enjoined from unlawful and unfair business acts.
9

10 X.
11 PRAYER FOR DAMAGES AND OTHER REMEDIES

- 12 1. For compensatory damages;
13 2. For statutory damages;
14 3. Pursuant to Business and Professions Code section 17203, that the Defendants be
15 permanently enjoined from violating Business and Professions Code section 17203,
16 in connection with the violations alleged in this complaint;
17 4. Restitution under section 17203 of the Business and Professions Code;
18 5. For interest according to law;
19 6. For attorneys' fees;
20 7. For costs of suit herein incurred;
21 8. For other and further relief as the court deem proper.
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23 DATED: 7/18/14

LAW OFFICES OF BASHIR GHAZIALAM

24 By: 
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26 BASHIR GHAZIALAM, ESQ.
27 Attorney for Plaintiff FARID MASHIRI
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