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SAN DIEGO COUNTY, CA

Attorney for Plaintiff:
FARID MASHIRI

By _____

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

FARID MASHIRI

Case No.

37-2013-00034539-CU-PT-CTL

Plaintiff,

COMPLAINT FOR:

vs.

COLLECTION CONSULTANTS OF
CALIFORNIA; KAISER FOUNDATION
HEALTH PLAN, INC.; LEE BYRD, an
individual; and DOES 1 through 25

Defendants.

1. VIOLATION OF 15 U.S.C. § 1692e(2)(A) AND CALIFORNIA CIVIL CODE § 1788.17;
2. VIOLATION OF 15 U.S.C. § 1692(f)(1) AND CALIFORNIA CIVIL CODE § 1788.17;
3. VIOLATION OF 15 U.S.C. § 1692e(11) AND CALIFORNIA CIVIL CODE § 1788.17;
4. VIOLATION OF CALIFORNIA CIVIL CODE § 1788.14(b);
5. VIOLATION OF CALIFORNIA BUSINESS AND PROFESSION CODE § 17200 *ET SEQ.*

Plaintiff FARID MASHIRI alleges as follows:.

I.
INTRODUCTION

1. Plaintiff, FARID MASHIRI (hereinafter referred to as "PLAINTIFF"), brings this lawsuit against defendants COLLECTION CONSULTANTS OF CALIFORNIA (hereinafter referred to as "CCC"), KAISER FOUNDATION HEALTH PLAN, INC. (hereinafter "KAISER"), and LEE BYRD (hereinafter "BYRD"), for several violations of state and federal law for its unlawful and unfair debt collections practices in repeated violations of the Federal

1 Fair Debt Collection Practices Act ("FDCPA"), Rosenthal Fair Debt Collections Practice Act
2 ("RFDCPA") and California Business and Profession Code section 17200 et seq. Accordingly,
3 PLAINTIFF brings this action to enjoin preliminary and permanently Defendants' unlawful
4 business practice and seek consumer restitution, civil penalties, punitive damages, statutory
5 damages, attorneys' fees and costs, and other equitable relief the Court deems appropriate.
6

7 **II.**
8 **PARTIES**

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

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

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

16 5. PLAINTIFF is informed and believes, and thereupon alleges, that Defendant CCC is a
17 debt collector who regularly collects or attempts to collect, directly or indirectly, debts owed or
18 due or asserted to be owed or due.
19

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

23 7. PLAINTIFF is informed and believes, and thereupon alleges, that Defendant KAISER
24 is a debt collector who regularly collects or attempts to collect, directly or indirectly, debts owed
25 or due or asserted to be owed or due.
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1 8. PLAINTIFF is informed and believes, and thereupon alleges, that Defendant BYRD is,
2 and at all times mentioned herein was, an individual, who was conducting and engaging in
3 business in the County of San Diego, California.

4 9. PLAINTIFF is informed and believes, and thereupon alleges, that Defendant BYRD is
5 a debt collector who regularly collects or attempts to collect, directly or indirectly, debts owed or
6 due or asserted to be owed or due.

7
8 10. PLAINTIFF is ignorant of the true names and capacities of those Defendants sued
9 herein as DOES 1 through 25, and therefore sues those Defendants by such fictitious names.
10 PLAINTIFF will amend this complaint to allege their true names and capacities when such
11 names and responsibilities are ascertained. PLAINTIFF is informed and believes and on that
12 basis alleges that each of the fictitiously named Defendants is responsible in some manner for the
13 occurrences alleged in this complaint, and that PLAINTIFF's claims alleged in this complaint
14 were proximately caused by such Defendants.
15

16 11. PLAINTIFF is informed and believes and thereupon alleges that at all times herein
17 mentioned each of the Defendants was the agent, servant, employee, or partner of each of the
18 remaining defendants and, in committing the acts and omissions hereinafter alleged, was acting
19 within the course and scope of such agency, employment, partnership, or other business
20 relationship, and were each responsible for the acts and omissions alleged in this complaint.
21

22 **III.**
JURISDICTION AND VENUE

23 12. Jurisdiction of this Court arises under California Code of Civil Procedure 410.10 *et*.
24 *seq.* This Court also has jurisdiction under 15 U.S.C. section 1692k(d).
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1 13. All of the actions and/or omissions of Defendants, as hereinafter alleged and giving
2 rise to this lawsuit, occurred/or the contract was to be performed, within this judicial district.
3 Therefore, this is the proper court for trial in this action.
4

5 **IV.**
RELEVANT FACTS

6 14. In February 2009, due to the economic crises, Plaintiff was laid off from his job of
7 14 years. In October 2009, PLAINTIFF was diagnosed with stage four stomach cancer and as a
8 result became permanently disabled, and was unable to care for himself.
9

10 15. Due to his permanent disability, Plaintiff applied and was approved to receive Medi-
11 Cal benefits.

12 16. Due to his cancer, PLAINTIFF is and was receiving chemotherapy and other related
13 medical treatments with Kaiser Permanente, while his medical expenses were covered by Medi-
14 Cal.
15

16 17. Defendant KAISER was aware that PLAINTIFF was a Medi-Cal recipient at the time
17 he was receiving treatment from KAISER. All the information was in KAISER's computer
18 system as well as in its files. PLAINTIFF informed KAISER on several occasions that he was a
19 Medi-Cal beneficiary, even provided KAISER with his Medi-Cal beneficiary card and number,
20 putting KAISER on direct notice that he was a Medi-Cal beneficiary.
21

22 18. Defendant KAISER sent letters attempting to collect an alleged debt of \$17,282.05
23 from PLAINTIFF, for services rendered by Kaiser Permanente relating to PLAINTIFF's cancer
24 treatment, knowing that PLAINTIFF had Medi-Cal benefits.

25 19. Despite informing Defendant KAISER on several occasion that he [PLAINTIFF] was
26 a Medi-Cal beneficiary, with full coverage, KAISER continued to harass and annoy PLAINTIFF
27 by falsely and deceptively asserting that PLAINTIFF owed \$17,282.05, which in fact he did not.
28

1 20. On or about August 20, 2012, Defendants CCC and BYRD sent out a letter falsely
2 and deceptively asserting that PLAINTIFF owed \$19,663.25. This was the first written
3 communication from Defendants CCC and BYRD.

4 21. On or about August 24, 2012, Defendants CCC and BYRD sent out a second letter,
5 falsely and deceptively asserting that PLAINTIFF owed \$19,680.66. This was the second
6 written communication from Defendants CCC and BYRD.

7 22. The letter dated August 24, 2012, was a subsequent communication, and did not state
8 that the communication was from a debt collector.

9 23. On August 29, 2012, PLAINTIFF informed Defendant CCC that he was represented
10 by his counsel and that all communications regarding the alleged debt should be addressed to his
11 attorney. Furthermore, PLAINTIFF disputed the debt and requested a verification of the debt in
12 writing.
13

14 24. Subsequent to PLAINTIFF's August 29, 2012 letter, Defendants BYRD and CCC
15 contacted PLAINTIFF's counsel, the Law Offices of Bashir Ghazialam, wherein it was
16 confirmed to Defendants BYRD and CCC that PLAINTIFF was being represented by the Law
17 Offices of Bashir Ghazialam and that PLAINTIFF had disputed the debt and had requested a
18 verification of the debt. Defendants BYRD and CCC were further reminded by the Law Offices
19 of Bashir Ghazialam that PLAINTIFF was disputing the entire debt and that the verification of
20 the debt was to be sent directly to the law office and not to PLAINTIFF. Defendants BYRD and
21 CCC were further informed that PLAINTIFF did not owe any money to them or to KAISER. A
22 verification of the debt was never sent to PLAINTIFF or PLAINTIFF's counsel.

23 25. PLAINTIFF alleges that as "Debt Collectors," Defendants are fully aware of
24 California's debt collection laws, including the RFDCPA and FDCPA, and further knew each of
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1 their harassing communications were subject to Title 1.6C (RFDCPA) of the California Civil
2 Code and 15 U.S.C. section 1692 (FDCPA).

3 26. PLAINTIFF alleges that Defendants knew each of their harassing communications
4 were willful and knowing violations of Title 1.6C (RFDCPA) of the California Civil Code and
5 15 U.S.C. section 1692 (FDCPA).
6

7 27. PLAINTIFF alleges that Defendants' harassing communications are part of an overall
8 unlawful business pattern and practice whereby they have knowingly, willfully, and intentionally
9 enterprised a profitable scheme through illegal collection activity.

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

16 29. As a direct and proximate cause of Defendants' harassing communications,
17 PLAINTIFF, who has cancer, has incurred actual damages consisting of mental and emotional
18 distress, nervousness, grief, embarrassment, loss of sleep, anxiety, worry, mortification, shock,
19 humiliation, indignity, pain and suffering, and other injuries.
20

21 30. PLAINTIFF incurred out of pocket monetary damages for attorneys' fees and costs
22 incurred for services provided to protect Plaintiff under the RFDCPA and FDCPA.

23 31. PLAINTIFF incurred additional incidental actual damages including, but not limited
24 to, transportation and gasoline costs to the law firm, telephone call charges, copies, postage, and
25 other damages.
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1 32. Defendants' harassing acts and violations of both federal and California law were so
2 willful, vexatious, outrageous, oppressive, and maliciously calculated enough, so as to warrant
3 statutory penalties and punitive damages as permitted by law.

4 **V.**

5 **FIRST CAUSE OF ACTION**

6 **(Violations of 15 U.S.C. 1692(e)(2)(A) and California Civil Code section 1788.17 against all
7 Defendants)**

8 33. PLAINTIFF re-alleges paragraphs 1 through 32, above, as if fully set forth herein.

9 34. 15 U.S.C. section 1692e(2)(A) provides in part:

10 A debt collector may not use any false, deceptive, or misleading representation or
11 means in connection with the collection of any debt. Without limiting the general
12 application of the foregoing, the following conduct is a violation of this section:

13 The false representation of—

14 (A) the character, amount, or legal status of any debt

15 35. Defendant KAISER violated 15 U.S.C. section 1692e(2)(A) because it falsely and
16 deceptively misrepresented to PLAINTIFF that he owed \$17,282.05. KAISER hereby
17 misrepresented the amount, status, and character of the alleged debt, despite knowing that
18 PLAINTIFF never owed that amount of money, and KAISER knowingly and intentionally
19 continued to attempt to collect such amount.

20 36. Defendants CCC and BYRD violated 15 U.S.C. section 1692e(2)(A) because they
21 falsely and deceptively misrepresented to PLAINTIFF in their first letter that he owed
22 \$19,663.25, which PLAINTIFF did not owe or ever owed. Defendants CCC and BYRD also
23 falsely and deceptively misrepresented to PLAINTIFF in their subsequent communication (i.e.
24 second letter) that he owed \$19,680.66, which PLAINTIFF did not owe or ever owed. CCC and
25 BYRD hereby misrepresented the amount, status, and character of the alleged debt, despite
26 knowing that PLAINTIFF never owed that amount of money, and Defendants CCC and BYRD
27 knowingly and intentionally continued to attempt to collect such amount.

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

4 38. The forgoing act(s) by Defendants, were willful and knowing violations of 15 U.S.C.
5 section 1692(e)(2)(A) and subject to a \$1,000.00 penalty under 15 U.S.C. section
6 1692k(a)(2)(A).

7 39. California Civil Code section 1788.17 requires that Defendants comply with the
8 provisions of 15 U.S.C. section 1692f(1).

9 40. The forgoing violations of 15 U.S.C. section 1692e(2)(A) by Defendants resulted in
10 separate violations of California Civil Code section 1788.17.

11 41. The forgoing act(s) by Defendants were willful, knowing, intentional, persistent,
12 frequent, and devious violations of 15 U.S.C. section 1692e(2)(A), and are also sole and separate
13 violations under California Civil Code section 1788.30(b), and trigger additional \$1,000.00
14 penalties.
15

16 42. Plaintiff has incurred reasonable and necessary costs and attorneys' fees in the
17 preparation and prosecution of this action and seeks reimbursement of his attorneys' fees and
18 costs pursuant to 15 U.S.C. section 1692k(a)(3) and California Civil Code sections 1788.30(c).
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21 **VI.**
22 **SECOND CAUSE OF ACTION**
23 **(Violations of 15 U.S.C. 1692(f)(1) and California Civil Code section 1788.17 against all**
24 **Defendants)**

25 43. PLAINTIFF re-alleges paragraphs 1 through 42, above, as if fully set forth herein.

26 44. 15 U.S.C. section 1692(f)(1) provides in part that:

27 A debt collector may not use unfair or unconscionable means to collect or
28 attempt to collect any debt. Without limiting the general application of the
foregoing, the following conduct is a violation of this section:

1 (1) The collection of any amount (including any interest, fee, charge, or
2 expense incidental to the principal obligation) unless such amount is
3 expressly authorized by the agreement creating the debt or permitted by
4 law.

5 45. Defendants violated 15 U.S.C. section 1692f(1) by attempting to collect an amount
6 which they are not entitled and prohibited by law from seeking. Defendants fraudulently and
7 deceptively added fees and charges and attempted to recover such fees and charges from
8 PLAINTIFF even though it was neither permitted by law nor by agreement.

9 46. Plaintiff has suffered harm resulting from Defendants' actions, as heretofore alleged,
10 including but not limited to worry, emotional distress, anxiety, humiliation, and out-of-pocket
11 expenses to be proven at trial.

12 47. The forgoing act(s) by Defendants, were willful and knowing violation of 15 U.S.C.
13 section 1692f(1) and subject to a \$1,000.00 penalty under 15 U.S.C. section 1692k(a)(2)(A).
14

15 48. California Civil Code section 1788.17 requires that Defendants comply with the
16 provisions of 15 U.S.C. section 1692f(1).

17 49. The forgoing violations of 15 U.S.C. section 1692f(1) by Defendants resulted in
18 separate violation of California Civil Code section 1788.17.

19 50. The forgoing act(s) by Defendants were willful, knowing, intentional, persistent,
20 frequent, and devious violation of 15 U.S.C. section 1692f(1), and are also sole and separate
21 violations under California Civil Code section 1788.30(b), and trigger additional \$1,000.00
22 penalties.
23

24 51. Plaintiff has incurred reasonable and necessary costs and attorneys' fees in the
25 preparation and prosecution of this action and seeks reimbursement of his attorneys' fees and
26 costs pursuant to 15 U.S.C. section 1692k(a)(3) and California Civil Code sections 1788.30(c).
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VII.
THIRD CAUSE OF ACTION
(Violations of 15 U.S.C. 1692e(11) and California Civil Code section 1788.17 against Defendants CCC and BYRD)

52. PLAINTIFF re-alleges paragraphs 1 through 51, above, as if fully set forth herein.

53. 15 U.S.C. section 1692e(11) provides in part that:

The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the **failure to disclose in subsequent communications that the communication is from a debt collector**, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

54. Defendants CCC and BYRD violated 15 U.S.C. section 1692e(11) for failing to disclose in subsequent communications that the communication is from a debt collector.

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

56. The forgoing act(s) by Defendants CCC and BYRD were willful and knowing violation of 15 U.S.C. section 1692e(11) and subject to a \$1,000.00 penalty per violation under 15 U.S.C. section 1692k(a)(2)(A).

57. California Civil Code section 1788.17 requires that Defendants CCC and BYRD comply with the provisions of 15 U.S.C. section 1692e(11).

58. The forgoing violations of 15 U.S.C. section 1692e(11) by Defendants CCC and BYRD resulted in separate violation of California Civil Code section 1788.17.

59. The forgoing act(s) by Defendants CCC and BYRD were willful, knowing, intentional, persistent, frequent, and devious violation of 15 U.S.C. section 1692e(11), and are

1 also sole and separate violations under California Civil Code section 1788.30(b), and trigger
2 additional \$1,000.00 penalties.

3 60. PLAINTIFF has incurred reasonable and necessary costs and attorneys' fees in the
4 preparation and prosecution of this action and seeks reimbursement of his attorneys' fees and
5 costs pursuant to 15 U.S.C. section 1692k(a)(3) and California Civil Code sections 1788.30(c).
6

7 **VIII.**
8 **FIFTH CAUSE OF ACTION**

9 **(Violations of California Civil Code section 1788.14(b) against all Defendants)**

10 61. PLAINTIFF re-alleges paragraphs 1 through 60, above, as if fully set forth herein.

11 62. California Civil Code section 1788.14(b) states in part that:

12 No debt collector shall collect or attempt to collect a consumer debt by means of
13 the following practices:

14 (b) Collecting or attempting to collect from the debtor the whole or any part of the
15 debt collector's fee or charge for services rendered, or other expense incurred by
16 the debt collector in the collection of the consumer debt, except as permitted by
17 law

18 63. Defendants violated California Civil Code section 1788.14(b) by attempting to collect
19 an amount which they are not entitled and prohibited by law from seeking. As stated above,
20 Defendants fraudulently and deceptively added fees and charges and attempted to recover such
21 fees and charges from PLAINTIFF even though it was neither permitted by law or agreement.

22 64. PLAINTIFF further alleges that the aforesaid conduct of Defendants by attempting to
23 add fees and charges which were neither permitted by law or agreement and by attempting to
24 collect such fees and charges was outrageous, intentional, malicious and oppressive as those
25 terms are defined by California Civil Code sections 3294(c)(1) and 3294(c)(2), entitling Plaintiff
26 to punitive damages.
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1 65. PLAINTIFF has incurred reasonable and necessary costs and attorneys' fees in the
2 preparation and prosecution of this action and seeks reimbursement of his attorneys' fees and
3 costs pursuant to California Civil Code sections 1788.30(c).

4 **IX.**

5 **FIFTH CAUSE OF ACTION**

6 **(Violations of Business and Professions Code Section 17200 *et seq.* against all Defendants
7 on behalf of PLAINTIFF and the General Public)**

8 66. PLAINTIFF re-alleges paragraphs 1 through 65, above, as if fully set forth herein.

9 67. California Business and Professions Code section 17200 *et seq.* prohibits unfair,
10 unlawful, and fraudulent business practices.

11 68. Defendants have engaged in unfair competition as defined by the Business and
12 Professions Code section 17200, *et seq.*

13 69. Defendants' acts and practices as alleged herein are unfair because the utility of the
14 conduct is outweighed by the gravity of the harm it causes. Further, Defendants' conduct is
15 unfair because it offends established public policy or is immoral, unethical, oppressive,
16 unscrupulous, and substantially injurious to consumers. Moreover, as detailed above and below,
17 Defendants' conduct violates consumer protection laws, specifically the FDCPA and RFDCPA,
18 violates the spirits of the statutes, and otherwise significantly threatens or harms consumers.
19 Defendants' conduct has caused substantial injury, which was not reasonably avoidable by
20 PLAINTIFF and is not outweighed by countervailing benefits to consumers or to competition.

21 70. Defendants' actions constitute unlawful competition because they engaged in the
22 following acts:
23

24 (a) Violating the FDCPA by misrepresenting the amount, status and character of
25 the alleged debt, in violation of 15 U.S.C. § 1692e(2)(A); by seeking to collect an
26 amount which they are not entitled and prohibited by law from seeking, in
27

1 violation 15 U.S.C. § 1692f(1); and by failing to disclose in subsequent
2 communications that the communication is from a debt collector, in violation of
3 15 U.S.C. § 1692e(11)

4 (b) Violating the RFDCPA by seeking to collect an amount which they are not
5 entitled and prohibited by law from seeking, in violation California Civil Code §
6 1788.14(b); by misrepresenting the amount, status and character of the alleged
7 debt, in violation of California Civil Code §1788.17.
8

9 71. PLAINTIFF has suffered injury in fact and monetary damages as a direct and
10 proximate result of Defendants' actions.

11 72. PLAINTIFF seeks restitutionary relief pursuant to Business and Professions Code
12 section 17203.
13

14 73. Defendants are engaging, have engaged, and there is a substantial likelihood that they
15 will continue to engage in this unlawful and unfair competition unless enjoined by this Court.
16 As such, pursuant to Business and Professions Code section 17203, Defendants should be
17 enjoined from unlawful and unfair business acts.

18 **X.**

19 **PRAYER FOR DAMAGES AND OTHER REMEDIES**

- 20 1. For compensatory damages;
21 2. For statutory damages;
22 3. Pursuant to Business and Professions Code section 17203, that the Defendants be
23 permanently enjoined from violating Business and Professions Code section 17203,
24 in connection with the violations alleged in this complaint;
25 4. Restitution under section 17203 of the Business and Professions Code;
26 5. For interest according to law;
27

6. For attorneys' fees;
7. For costs of suit herein incurred;
8. For punitive or exemplary damages;
9. For other and further relief as the court deem proper.

DATED: 2/11/13

LAW OFFICES OF BASHIR GHAZIALAM

By: 

BASHIR GHAZIALAM, ESQ.
Attorney for Plaintiff,
FARID MASHIRI