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FILED

SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

JUN 17 2016

TERRY McNALLY, CLERK
BY [Signature] DEPUTY

**NOTICE OF ASSIGNMENT AND
CASE MANAGEMENT CONFERENCE :**

SIDNEY P CHAPIN

Assigned to _____ for all purposes.

Hearing Date: 12-19-16

Time: 3:00

Department: 4

See CRC Rule 3.720 Et. Seq.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN - UNLIMITED**

Case No.: BCV-16-101385

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF FOR VIOLATION OF:**

- (1) THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT, CAL. CIV. CODE § 1788, ET SEQ.
- (2) FAIR DEBT BUYING PRACTICES ACT CAL. CIV. CODE §§ 1788.50-1788.65

JURY TRIAL DEMANDED

**FREDERICK C. ANDERSON,
Individually And On Behalf Of
All Others Similarly Situated**

Plaintiff,

v.

**PHOENIX FINANCIAL
SERVICES, LLC; and,
PENDRICK CAPITAL
PARTNERS II, LLC,**

Defendants.

KAZEROUNI LAW GROUP, APC
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COSTA MESA, CA 92626

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INTRODUCTION

1. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty, and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.¹
2. Plaintiff FREDERICK C. ANDERSON ("Plaintiff"), through Plaintiff's attorneys, brings this action to challenge the actions of PHOENIX FINANCIAL SERVICES, LLC ("Phoenix" and/or collectively "Defendants") and PENDRICK CAPITAL PARTNERS II, LLC ("PCP" and/or collectively "Defendants") with regard to attempts by Defendants to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
3. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to Plaintiff, or to Plaintiff's counsel, which Plaintiff alleges on personal knowledge.
4. While many violations are described below with specificity, this Complaint alleges violations of the statute cited in its entirety.
5. Unless otherwise stated, all the conduct engaged in by Defendants took place in California.
6. Any violations by Defendants were knowing, willful, and intentional, and Defendants did not maintain procedures reasonably adapted to avoid any such

¹ Cal. Civ. Code §§ 1788.1 (a)-(b)

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violation.

7. Unless otherwise indicated, the use of Defendants' names in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of Defendants' named.

JURISDICTION AND VENUE

8. Pursuant to Cal. Civ. Proc. Code § 382, Plaintiff brings this action on behalf of himself, and on behalf of all persons similarly situated.
9. This Court has subject matter jurisdiction over all causes of action alleged in this Complaint pursuant to the California Constitution, Article VI, § 10, and is a Court of competent jurisdiction to grant the requested. This action arises out of Defendant' violations of the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA").
10. This Court has personal jurisdiction over Defendant because Defendant does business in the County of Kern, State of California, has sufficient minimum contacts with this county and state, and otherwise purposely avails itself of the markets in this county and state through the promotion, sale, and marketing of its products in this state, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.
11. Venue of this particular Court is proper as Plaintiff is a resident and citizen of the County of Kern, State of California, and all harm was caused to Plaintiff within the County of Kern, State of California.

PARTIES

12. Plaintiff is a natural person who resides in the City of Mojave, County of Kern, in the State of California, from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil

1 Code § 1788.2(h). In addition, Plaintiff is a natural person allegedly obligated
2 to pay a debt, and is a “consumer”, as that term is defined by 15 U.S.C. §
3 1692a(3).

4 13. Defendant Phoenix is a limited liability corporation incorporated in the State
5 of Indiana with a principle place of business in Indiana. Defendant Phoenix is
6 therefore a “person” within the meaning of California Civil Code § 1788.2(g).

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

11 15. Upon information and belief, Defendant Phoenix was attempting to collect on
12 a debt that originated from monetary credit that was extended primarily for
13 personal, family, or household purposes due to alleged medical services
14 performed upon Plaintiff, and was therefore a “consumer credit transaction”
15 within the meaning of California Civil Code § 1788.2(e) and a “debt” as that
16 term is defined by California Civil Code § 1788.2(d).

17 16. Defendant PCP is a limited liability corporation incorporated in the State of
18 Delaware. Defendant PCP is therefore a “person” within the meaning of
19 California Civil Code § 1788.2(g).

20 17. Defendant PCP, in the ordinary course of business, regularly, on behalf of
21 itself or others, engages in “debt collection” as that term is defined by
22 California Civil Code § 1788.2(b), and is therefore a “debt collector” as that
23 term is defined by California Civil Code § 1788.2(c) and 15 U.S.C. 1692a(6).

24 18. Upon information and belief, Defendant PCP was attempting to collect on a
25 debt that originated from monetary credit that was extended primarily for
26 personal, family, or household purposes due to alleged medical services
27 performed upon Plaintiff, and was therefore a “consumer credit transaction”
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1 within the meaning of California Civil Code § 1788.2(e) and a “debt” as that
2 term is defined by California Civil Code § 1788.2(d).

3 19. Since this case involves money, property or their equivalent, due or owing or
4 alleged to be due or owing from a natural person by reason of a consumer
5 credit transaction, this action arises out of a “consumer debt” and “consumer
6 credit transaction” as those terms are defined by Cal. Civ. Code § 1788.2(f)
7 and (e).

8 20. Since Defendant sought to collect a consumer debt which was due and owing
9 or alleged to be due and owing from Plaintiff, Plaintiff is a “debtor” as that
10 term is defined by California Civil Code § 1788.2(h) and Defendants are
11 “creditor(s)” as that term is defined by California Civil Code § 1788.2(i). In
12 addition, Plaintiff is a natural person allegedly obligated to pay a debt, and is a
13 “consumer”, as that term is defined by 15 U.S.C. § 1692a(3).

14 **FACTUAL ALLEGATIONS**

15 21. At all times relevant, Plaintiff is an individual residing within City of Mojave,
16 County of Kern, in the State of California.

17 22. Plaintiff is informed and believes, and thereon alleges, that at all times
18 relevant, Defendants conducted business in the State of California.

19 23. Plaintiff is informed and believes, and thereon alleges that sometime on or
20 before January 30, 2014, Plaintiff allegedly incurred financial obligations to
21 an original creditor that were money, property, or their equivalent, which is
22 due or owing, or alleged to be due or owing, from a natural person to another
23 person and were therefore “debt(s)” as that term is defined by California Civil
24 Code §1788.2(d), and a “consumer debt” as that term is defined by California
25 Civil Code §1788.2(f) and 15 U.S.C. § 1692a(5).

26 24. Sometime thereafter, Defendants allege that Plaintiff allegedly fell behind on
27 the payments allegedly owed on the alleged debt. Plaintiff currently takes no
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- 1 position as to the validity of the alleged debt.
- 2 25. Plaintiff is informed and believes, and thereon alleges that following
3 Plaintiff's alleged delinquency, sometime after January 2014, but before
4 September 2015, the original creditor allegedly sold, transferred, placed or
5 assigned Plaintiff's alleged debt to Defendant PCP.
- 6 26. Defendant PCP is therefore a "debt buyer" as defined by California Civil
7 Code §1788.50(2).
- 8 27. Subsequently, Plaintiff's alleged debt became a "charge-off consumer debt"
9 as the term is defined by California Civil Code §1788.50(2).
- 10 28. On or around September 18, 2015, in attempt to collect the alleged debt
11 allegedly owed by Plaintiff, Defendants sent Plaintiff an initial written
12 communication attempting to collect the alleged debt allegedly owed by
13 Plaintiff to Defendant PCP. This letter is considered a "communication" as 15
14 U.S.C. § 1692a(2) defines that term, and "debt collection" as that phrase is
15 defined by Cal. Civ. Code § 1788.2(b).
- 16 29. Although the letter was sent by Defendant Phoenix, the letter evidences
17 Defendant PCP's knowledge and control over the content of the written
18 communication by way of the language within the actual letter. For example,
19 the letter states that "[t]he balance(s) on the account(s) referenced above ...
20 and currently owed by PENDRICK CAPITAL PARTNERS II LLC ... have
21 been placed with Phoenix Financial Services, LLC for collection." The letter
22 further states that "[o]ur client, by PENDRICK CAPITAL PARTNERS II
23 LLC. ... has asked us to provide you with the information contained below."
- 24 30. Defendants' initial letter omitted the consumer collection notice required by
25 the RFDCPA, Cal Civ. Code 1812.700.
- 26 31. Through this conduct, Defendants each violated Cal Civ. Code 1812.700.
- 27 32. Defendants' initial letter also omitted the consumer collection notice required
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1 by the FDBPA, Cal Civ. Code 1788.52(d)(1).

2 33. Through this conduct, Defendant PCP violated Cal Civ. Code 1812.700.

3 34. As a result of Defendants' unfair, oppressive, and abusive conduct in
4 connection with their debt collection activity, Plaintiff has suffered emotional
5 distress by way of stress, frustration, anxiety, humiliation, embarrassment,
6 anger, annoyance, lost time due to the fact that Defendants have continued
7 their collection efforts despite receiving multiple communications indicating
8 the debt is paid and does not belong to Plaintiff.

9 **CLASS ACTION ALLEGATIONS**

10 35. Plaintiff brings this class action on behalf of himself, and on behalf of all
11 others similarly situated.

12 36. Plaintiff defines "the Class" as:

13 All persons with addresses within the State of California
14 whose received Defendants' initial debt collection letter
15 without the required California consumer notice within
16 one year prior to the filing of the Complaint in this
17 action.

18 37. Defendants and their employees or agents are excluded from the Class.

19 38. Plaintiff does not know the exact number of persons in the Class, but believe
20 them to be in the several hundreds, making joinder of all these actions
21 impracticable.

22 39. The identity of the individual members is ascertainable through Defendants
23 and/or Defendants' agents' records or by public notice.

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

- 28 a) Whether Defendants violated the RFDCPA as described herein;
b) Whether Defendant PCP violated the FDBPA as described herein;

- 1 c) Whether members of the Class are entitled to the remedies under the
- 2 RFDCPA;
- 3 d) Whether members of the Class are entitled to the remedies under the
- 4 FDBPA;
- 5 e) Whether members of the Class are entitled to declaratory relief;
- 6 f) Whether members of the Class are entitled to an award of reasonable
- 7 attorneys' fees and costs of suit pursuant to the RFDCPA;
- 8 g) Whether members of the Class are entitled to an award of reasonable
- 9 attorneys' fees and costs of suit pursuant to the FDBCA;
- 10 h) Whether Defendants may satisfy Defendants' affirmative defense of bona
- 11 fide error with regard to Defendant's violation of the RFDCPA; and,
- 12 i) Whether Defendant PCP may satisfy Defendant PCP's affirmative
- 13 defense of bona fide error with regard to Defendant's violation of the
- 14 FDBPA.
- 15 41. Plaintiff will fairly and adequately protect the interest of the Class.
- 16 42. Plaintiff has retained counsel experienced in consumer class action litigation
- 17 and in handling claims involving unlawful debt collection practices.
- 18 43. Plaintiff's claims are typical of the claims of the Class, which all arise from
- 19 the same operative facts involving unlawful collection practices.
- 20 44. A class action is a superior method for the fair and efficient adjudication of
- 21 this controversy.
- 22 45. Class-wide damages are essential to induce Defendants to comply with the
- 23 federal and State laws alleged in the Complaint.
- 24 46. The interests of class members in individually controlling the prosecution of
- 25 separate claims against Defendants is small because the maximum statutory
- 26 damages in an individual action under the RFDCPA and the FDBPA is
- 27 \$1,000. Management of these claims is likely to present significantly fewer
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- 1 difficulties than those presented in many class claims, e.g., securities fraud.
- 2 47. Defendants have acted on grounds generally applicable to the classes, thereby
- 3 making appropriate final declaratory relief with respect to the class as a
- 4 whole.
- 5 48. Plaintiff contemplates providing notice to the putative class members by direct
- 6 mail in the form of a postcard-type notice and via Internet website.
- 7 49. Plaintiffs request certification of a class for monetary damages.

8 **COUNT I**

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

10 **Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)**

11 **[AGAINST ALL DEFENDANTS]**

- 12 50. Plaintiff incorporates by reference all of the above paragraphs of this
- 13 Complaint as though fully stated herein.
- 14 51. The foregoing acts and omissions constitute numerous and multiple violations
- 15 of the RFDCPA.
- 16 52. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to
- 17 any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory
- 18 damages for a knowing or willful violation in the amount up to \$1,000.00
- 19 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorneys fees and
- 20 costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendants.

21 **COUNT II**

22 **VIOLATION OF THE FAIR DEBT BUYING PRACTICES ACT**

23 **Cal. Civ. Code §§ 1788.50-1788.65 (FDBPA)**

24 **[AGAINST DEFENDANT PCP]**

- 25 53. Plaintiff incorporates by reference all of the above paragraphs of this
- 26 Complaint as though fully stated herein.
- 27 54. The foregoing acts and omissions constitute numerous and multiple violations
- 28

1 of the FDBPA.

2 55. As a result of each and every violation of the FDBPA, Plaintiff is entitled to
3 any actual damages pursuant to Cal. Civ. Code § 1788.62(a)(1); statutory
4 damages in the amount up to \$1,000.00 pursuant to Cal. Civ. Code §
5 1788.62(a)(2); and reasonable attorneys fees and costs pursuant to Cal. Civ.
6 Code § 1788. 62(a)(3) from Defendants.

7 **PRAYER FOR RELIEF**

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

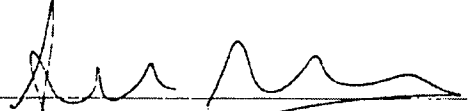
- 9 • That this action be certified as a class action on behalf of The Class and
10 Plaintiffs be appointed as representatives of the Class;
 - 11 • An award of actual damages, in an amount to be determined at trial,
12 pursuant to Cal. Civ. Code § 1788.30(a), for Plaintiff and the Class;
 - 13 • An award of actual damages, in an amount to be determined at trial,
14 pursuant to Cal. Civ. Code § 1788.62(a)(1), for Plaintiff and the Class;
 - 15 • An award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code
16 § 1788.30(b), for Plaintiff and the Class;
 - 17 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §
18 1788.62(a)(2), for Plaintiff and the Class;
 - 19 • An award of costs of litigation and reasonable attorney's fees, pursuant to
20 Cal. Civ. Code § 1788.30(c) for Plaintiff and the Class;
 - 21 • An award of costs of litigation and reasonable attorney's fees, pursuant to
22 Cal. Civ. Code § 1788.62(a)(3), for Plaintiff and the Class;
 - 23 • General damages according to proof, as to Plaintiff;
 - 24 • Special damages according to proof, as to Plaintiff;
 - 25 • Loss of earnings according to proof, as to Plaintiff;
 - 26 • Costs of suit incurred herein; and,
 - 27 • Any and all other relief the Court deems just and proper.
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1 TRIAL BY JURY

2 56. Pursuant to the seventh amendment to the Constitution of the United States of
3 America, Plaintiff is entitled to, and demands, a trial by jury.

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5 Dated: June 17, 2016

KAZEROUNI LAW GROUP, APC

6
7 BY: /s/ 

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