

Attachment 4: Affirmative Defenses-Debt Collection Activities

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Plaintiff, _____ Debt Collection Agency and/or its _____ Attorney who regularly collects debt for it is/are subject to the Rosenthal Fair Debt Collection Act (“RFDCA”)- Civil Code § 1788 et. seq. and/or the California Business and Professions Code (§ 6077.5 et. seq.). By violating these laws as listed below, it must pay back any out-of-pocket expenses Defendant paid due to the violation(s).

If Defendant shows Plaintiff intentionally violated the law, Plaintiff must also pay up to \$1000 for each violation. These sums off-set (reduce or eliminate) Defendant’s debt, if any. (§ 1788.30(a.-g.))

____ Plaintiff/Plaintiff’s attorney did not disclose in its initial communication me that it was trying to collect a debt and that any information obtained would be used for that purpose.(15 U.S.C.§ 1692e(11))

____ Plaintiff/Plaintiff’s attorney did not give me:

____ a debt validation notice **at all** (15 U.S.C. § 1692g; Bus. & Prof. Code § 6077.5(g))

____ a debt validation notice at the same time or within 5 days of its initial communication with Defendant. (15 U.S.C. § 1692g(a)(1-5); Bus. & Prof. Code § 6077.5(g)(1)-(5))

____ a debt validation notice in consumer’s language when initial communication was in a language other than English (CC § 1812.700(c))

____ a proper debt validation notice. The notice left out:

____ the amount of debt allegedly owed (§ 1692g(a)(1); § 6077.5(g)(1))

____ the name of the original creditor to whom the debt is allegedly owed (§1692g(a)(2);§6077.5(g)(2))

____ that the debtor could request the name/address of the original creditor (§1692g(a)(5); § 6077.5(g)(5))

____ that the debtor had the right to dispute the debt within 30 days (§ 1692g(a)(3); §6077.5(g)(3))

____ that the debtor could request written verification of the debt within 30 days (§ 1692g(a)(4); § 6077.5(g)(4))

____ Plaintiff/Plaintiff’s attorney did not stop collection and investigate the authenticity of the debt or provide information about the creditor or the debt after I made a request to do so within 30 days after I had received the debt validation notice. (15 U.S.C. § 1692g(b); Bus. & Prof. Code § 6077.5(g)(5)).

Attachment 4: Affirmative Defenses-Debt Collection Activities

1
2 **Plaintiff is subject to the Rosenthal Fair Debt Collection Act (Civil Code § 1788 et. seq.) and/or the**
3 **Fair Debt Collection Practices Act (15 U.S.C. § 1692 et. seq.) and/or the California Business and**
4 **Professions Code (§ 6077.5 et. seq.). By violating the laws as listed below, it must pay back any**
5 **out-of-pocket expenses Defendant paid due to the violation(s). If Defendant shows Plaintiff**
6 **intentionally violated the law, Plaintiff must also pay up to \$1000 for each violation. These sums**
7 **off-set (reduce or eliminate) Defendant's debt, if any. (§ 1788.30(a-g)) Plaintiff, who is the original**
8 **creditor or a debt collection agency, and/or its attorneys, violated these laws by:**

9 ___ Failing to respond within 60 days to a written inquiry, posted by certified mail by the Defendant,
10 concerning any debit or credit applicable to the debt. Plaintiff is not entitled to interest, financing
11 charges, service charges or any other similar charges, from the date of mailing of the inquiry to the
12 date of mailing of the response. (CC § 1720)

13 ___ Failing to identify him/herself and/or state the true name or nature of the organization, company, or
14 business on behalf of which Plaintiff is acting. (15 U.S.C. §§ 1692d(6), e(14); CC §§ 1788.11(b), 13(a))

15 ___ Failing to correctly identify him/herself, his/her employer, and/or give his/her job title when the person
16 is an employee of Plaintiff's attorney who is not licensed in California. (Bus. & Prof. Code § 6077.5(b))

17 ___ Using abusive, obscene, or profane language against Defendant to collect the alleged debt. (15
18 U.S.C. § 1692d(2); CC § 1788.11(a))

19 ___ Using threats, violence, or other criminal means to physically harm Defendant or harm the
20 Defendant's reputation or property. (15 U.S.C. § 1692d(1); CC § 1788.10(a))

21 ___ Using false, deceptive, or misleading ways to collect the alleged debt (e.g., false
22 suggestion that collector is attorney, falsely implying that sale, referral, or transfer of interest in debt
23 would cause Defendant to lose any claim or defense, threats to falsify credit reports). (15 U.S.C. §
24 1692e; CC § 1788.13)

25 ___ Using unfair or unconscionable means to collect a debt (e.g., unauthorized collections, illegal fees,
26 charges for phone calls or letters, suing on a debt when the collector knows the statute of limitations
27 has expired, misapplication of payments). (15 U.S.C. § 1692f; CC § 1788.10(f)).

Attachment 4: Affirmative Defenses-Debt Collection Activities

1
2 **Plaintiff is subject to the Rosenthal Fair Debt Collection Act (Civil Code § 1788 et. seq.) and/or the**
3 **Fair Debt Collection Practices Act (15 U.S.C. § 1692 et. seq.) and/or the California Business and**
4 **Professions Code (§ 6077.5 et. seq.). By violating the laws as listed below, it must pay back any**
5 **out-of-pocket expenses Defendant paid due to the violation(s). If Defendant shows Plaintiff**
6 **intentionally violated the law, Plaintiff must also pay up to \$1000 for each violation. These sums**
7 **off-set (reduce or eliminate) Defendant's debt, if any. (§ 1788.30(a-g)) Plaintiff, who is the original**
8 **creditor or a debt collection agency, and/or its attorneys, violated these laws by:**

9
10 ___ Harassing Defendant with repeated phone calls. (15 U.S.C. § 1692d(5); CC §§ 1788.11(d), (e))

11 ___ Continuing efforts to collect, and/or failing to investigate, the alleged debt after receiving the required
12 information from Defendant that he/she was a victim of identity theft. (CC § 1788.18(a-i))

13 ___ Attempting to collect a debt by filing a lawsuit which is too old to be enforceable. (15 U.S.C.
14 §1692e(2)(A)).

15 ___ Attempting to collect a debt when it knows that service of process was defective. (CC § 1788.15(a))

16 ___ Attempting to collect a debt by using written communication that displays information other than the
17 debt collector's address or business name on the envelope, if the name does not indicate that he is in
18 the debt collection business. (15 U.S.C. § 1692f(8)).

19 ___ Failing to provide a consumer reporting agency with notice that Defendant is disputing information
20 about the debt. (15 U.S.C. § 1681s-2(a)(3))

21 ___ Contacting Defendant before 8:00 A.M. or after 9:00 P.M. or at other times or locations it knew were
22 inconvenient or unusual for Defendant. (15 U.S.C. § 1692c(a)(1); Bus. & Prof. Code § 6077.5(c))

23 ___ Contacting third parties, other than Defendant' spouse/ parent (if Defendant is a minor)/ guardian/
24 executor/ administrator, about the alleged debt without Defendant's permission, unless allowed by
25 law. (15 U.S.C. §§ 1692c(b); c(d); CC § 1788.12(a-e))

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Attachment 4: Affirmative Defenses-Debt Collection Activities

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2 **Plaintiff is subject to the Rosenthal Fair Debt Collection Act (Civil Code § 1788 et. seq.) and/or the**
3 **Fair Debt Collection Practices Act (15 U.S.C. § 1692 et. seq.) and/or the California Business and**
4 **Professions Code (§ 6077.5 et. seq.). By violating the laws as listed below, it must pay back any**
5 **out-of-pocket expenses Defendant paid due to the violation(s). If Defendant shows Plaintiff**
6 **intentionally violated the law, Plaintiff must also pay up to \$1000 for each violation. These sums**
7 **off-set (reduce or eliminate) Defendant's debt, if any. (§ 1788.30(a.-g.)) Plaintiff, who is the original**
8 **creditor or a debt collection agency, and/or its attorneys, violated these laws by:**

9
10 ___ Contacting Defendant or a third party, after Defendant, in writing, refused to pay the alleged
11 debt and/or asked that Plaintiff stop communicating with Defendant or a third party. (15 U.S.C.
12 §1692c(c)(1-3))

13 ___ Threatening that nonpayment of the alleged debt might result in the Defendant's arrest,
14 and/or the seizure, garnishment, attachment or sale of the Defendant's property, unless Plaintiff
15 actually intended such action and it was permitted by law. (15 U.S.C. § 1692e(5); CC § 1788.10(e))

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