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KIM BEAUCHAMP LEGAT

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8 **U.S. DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

9 KIM BEAUCHAMP-LEGAT, an
individual

10 Plaintiff,

11 v.

12 FIRST NATIONAL COLLECTION
13 BUREAU, INC.; and DOES 1-10;

14 Defendant.

Case No.:

**COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL
FOR VIOLATIONS OF:**

- 1. **FEDERAL FAIR DEBT
COLLECTION PRACTICES
ACT, 15 U.S.C. § 1692, et seq.;**
- 2. **STATE OF CALIFORNIA
ROSENTHAL ACT, CALIF.
CIV. CODE § 1788, et seq.;**

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16
17 Plaintiff, KIM BEAUCHAMP-LEGAT, an Individual, by and through her
18 attorneys of record, hereby complains and alleges as follows:

19 **INTRODUCTION**

20 1. Plaintiff, by and through her attorneys of record, brings this action to
21 secure redress from unlawful debt collection practices engaged in by Defendant FIRST

1 NATIONAL COLLECTION BUREAU, INC. (hereinafter “FNCB”) in violation of the
2 Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692-1692p (hereinafter
3 “FDCPA”) and the State of California Rosenthal Act, California Civil Code § 1788-
4 1788.32 (hereinafter “Rosenthal” or “Rosenthal Act”).

5 2. Plaintiff makes the allegations below on information and belief, with the
6 exception of those allegations that pertain to Plaintiff personally, or to Plaintiff’s
7 counsel, which Plaintiff alleges on personal knowledge.

8 3. While many violations are described below with specificity, this
9 Complaint alleges violations of the statutes cited in their entirety.

10 4. In 15 U.S.C. § 1692(a)-(e), the U.S. Legislature made the following
11 findings and purpose in creating the FDCPA:

12 Abusive practices. There is abundant evidence of the use of
13 abusive, deceptive, and unfair debt collection practices by many
14 debt collectors. Abusive debt collection practices contribute to the
number of personal bankruptcies, to marital instability, to the loss
of jobs, and to invasions of individual privacy.

15 Inadequacy of laws. Existing laws and procedures for redressing
16 these injuries are inadequate to protect consumers.

17 Available non-abusive collection methods. Means other than
18 misrepresentation or other abusive debt collection practices are
available for the effective collection of debts.

19 Interstate commerce. Abusive debt collection practices are carried
20 on to a substantial extent in interstate commerce and through
21 means and instrumentalities of such commerce. Even where
abusive debt collection practices are purely intrastate in character,
they nevertheless directly affect interstate commerce.

1 Purposes. It is the purpose of this title [15 USCS §§ 1692 et seq.]
2 to eliminate abusive debt collection practices by debt collectors, to
3 insure that those debt collectors who refrain from using abusive
4 debt collection practices are not competitively disadvantaged, and
5 to promote consistent State action to protect consumers against
6 debt collection abuses.

5 5. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the
6 following findings and purpose in creating the Rosenthal Act:

7 (a)(1) The banking and credit system and grantors of credit to
8 consumers are dependent upon the collection of just and owing
9 debts. Unfair or deceptive collection practices undermine the
10 public confidence which is essential to the continued functioning
11 of the banking and credit system and sound extensions of credit to
12 consumers.

(2) There is need to ensure that debt collectors and debtors exercise
their responsibilities to another with fairness and honesty and due
regard for the rights of the other.

(b) It is the purpose of this title to prohibit debt collectors from
engaging in unfair or deceptive acts of practices in the collection of
consumer debts and to require debtors to act fairly in entering into
and honoring such debts, as specified in this title.

15 **JURISDICTION AND VENUE**

16 4. This action arises out of Defendant's violations of the Federal FDCPA,
17 over which the U.S. District Court has original subject matter jurisdiction pursuant to 15
18 U.S.C. § 1681p. The U.S. District Court has supplemental jurisdiction over all state law
19 causes of action pursuant to 28 U.S.C. § 1367(a).

20 5. Defendant FNCFB is incorporated and headquartered within the State of
21 Nevada, but regularly conducts business within the State of California by purposefully

1 contacting California residents for purposes of debt collection, personal jurisdiction is
2 established.

3 6. Venue in this District is proper pursuant for the following reasons: (i)
4 Plaintiff resides in the County of Riverside, State of California, which is within this
5 judicial district; (ii) the conduct complained of herein occurred within this judicial
6 district; and, (iii) Defendant has conducted business within this judicial district at all
7 times relevant.

8 **PARTIES & DEFINITIONS**

9 7. Plaintiff is a natural person whose permanent residences is in the County
10 of Riverside, State of California, and is therefore a “person” as that term is defined by
11 California Civil Code § 1788.2(g) of the Rosenthal Act.

12 8. Plaintiff, as a natural person allegedly obligated to pay a consumer debt to
13 Defendant arising out of a Best Buy credit card issued by HSBC Bank of Nevada, N.A.
14 that Plaintiff previously used for household goods, alleged to have been due and owing,
15 is therefore both a “consumer” as that term is defined by 15 U.S.C. § 1692a(3) of the
16 FDCPA, and a “debtor” as that term is defined by California Civil Code § 1788.2(h) of
17 the Rosenthal Act.

18 9. As a partnership, corporation, limited liability company, or other similar
19 entity, Defendants therefore are “persons” within the meaning of California Civil Code
20 § 1788.2(g) of the Rosenthal Act.

21 10. Defendant alleged that it was collecting upon an allegedly defaulted credit

1 card bill that Plaintiff initially owed to HSBC Bank of Nevada, N.A., which Plaintiff
2 incurred by utilizing the line of credit issued to her as a Best Buy credit card for every
3 day purchases in his daily personal life. Therefore, Plaintiff is informed and believes
4 that the money alleged to have been owed to Defendants originated from monetary
5 credit that was extended primarily for personal, family, or household purposes, and is
6 therefore a “debt” as that term is defined by 15 U.S.C. § 1692a(5) of the FDCPA and
7 California Civil Code § 1788.2(d) of the Rosenthal Act.

8 11. Therefore, the money that Defendant was attempting to collect was a
9 “consumer credit transaction” within the meaning of California Civil Code § 1788.2(e)
10 of the Rosenthal Act.

11 12. Because Plaintiff, a natural person allegedly obligated to pay money
12 arising from what Plaintiff is informed and believes was a consumer credit transaction,
13 the money allegedly owed was a “consumer debt” within the meaning of California
14 Civil Code § 1788.2(f) of the Rosenthal Act.

15 13. Plaintiff is informed and believes that Defendant utilizes the
16 instrumentalities of interstate commerce and the mails in a business for which the
17 principal purpose is the collection of any debts; regularly collect or attempt to collect,
18 directly or indirectly, debts owed or due or asserted to be owed or due another or
19 themselves; and are therefore “debt collectors” within the meaning of 15 U.S.C. §
20 1692a(6) of the FDCPA and California Civil Code § 1788.2(c) of the Rosenthal Act,
21 and thereby engage in “debt collection” within the meaning of California Civil Code §

1 1788.2(b) of the Rosenthal Act.

2 **FACTUAL ALLEGATIONS**

3 14. Sometime prior to the year 2005, Plaintiff was issued a Best Buy credit
4 card, backed by a line of credit by HSBC Bank of Nevada, N.A., that Plaintiff used for
5 purchasing household goods.

6 15. Plaintiff entered into this contract while she was a resident of the State of
7 California.

8 16. The last four digits of the account number is 2602.

9 17. At some point in or prior to the year 2005, Plaintiff went into default upon
10 this line of credit.

11 18. Plaintiff thereafter listed the debt in her Chapter 7 bankruptcy petition in
12 the year 2005, and it was ultimately discharged in the year 2006.

13 19. Because the default occurred at some point in or prior to the year 2005, any
14 legal ability of the creditor or any successor or assignee of the original creditor to file a
15 lawsuit against Plaintiff to obtain a judgment on said debt has been barred by the
16 applicable statute of limitations since at least sometime in the year 2009. *See* Calif.
17 Code of Civ. Proc §337, which creates a four year statute of limitations for breach of
18 written contract within the State of California.

19 20. By letter dated February 17, 2015, Defendant FNCB sent a letter to
20 Plaintiff informing her that they are attempting to collect upon the HSBC Bank of
21 Nevada, N.A./Best Buy credit card ending in 2602.

1 21. In one area, this letter shows that Defendant claimed to be providing a
2 “settlement offer” of 90% off the debt.

3 22. In a different sentence, the letter also states that Defendant is offering “a
4 settlement of \$419.47 in 5 payments over 5 months”.

5 23. The letter also states, “Once all five (5) payments have been paid to our
6 office on time, we will consider this account as settled in full”.

7 24. The letter also states, “Payments may not be more than 30 days apart or
8 this settlement may be canceled.”

9 25. The letter also states, “This settlement offer is only guaranteed if we
10 receive your payments in our office on or before the dates set forth in this letter. If we
11 do not receive payment in these amounts by these dates, we reserve the right to modify
12 the settlement offer, or revoke it in its entirety.”

13 26. By repeatedly using the words “settlement” and “settle” and “offer to
14 settle”, and including a schedule of payments under threat of the “settlement offer being
15 revoked or modified”, Defendant has implied the false representation that it has a legal
16 ability to sue Plaintiff upon the time barred debt.

17 27. The FTC has recommended that if a collector knows or should know that it
18 is collecting on a time-barred debt, it must inform the consumer that (1) the collector
19 cannot sue to collect the debt, and (2) providing partial payment would revive the
20 collector's ability to sue to collect the remaining balance.

21 28. The Seventh Circuit Court of Appeals has ruled, “[A]n unsophisticated

1 consumer could be misled by a dunning letter for a time-barred debt, especially a letter
2 that uses the term ‘settle’ or ‘settlement.’” *McMahon v. LVNV Funding, LLC* (7 Cir.
3 2014) 744 F.3d 1010, 1022; followed by *Finley v. Dynamic Recovery Solutions LLC*
4 (June 15, 2015 C.D. Calif.) 2015 U.S. Dist. LEXIS 77999, *11-13 (“It is plausible that
5 the least sophisticated consumer could view an offer to settle as a veiled threat of
6 litigation, or, at the least, as a misrepresentation that a debt is still enforceable.”).

7 29. In the instant matter, Plaintiff here was misled and confused, and suffered
8 mental anguish by way of loss of sleep, nervousness, anxiety, and fear over the thought
9 that she might possibly be sued on the time barred debt after she has worked diligently
10 and earnestly to try and repair her life as a consumer after her Chapter 7 bankruptcy.

11 30. After Plaintiff did not respond to Defendant, Defendant thereafter has
12 failed to pursue legal action against Plaintiff, which shows that Defendant never had the
13 intention of pursuing legal action and its implied threats were simply intended to scare
14 her into paying the debt off.

15 **FIRST CAUSE OF ACTION**
16 **(VIOLATIONS OF FDCPA)**
17 **15 U.S.C. §§ 1692-1692p**

18 31. Plaintiff re-alleges and incorporates by reference the above paragraphs, as
19 though set forth fully herein.

20 32. By threatening to sue Plaintiff on a debt that is barred by statute of
21 limitations, and Defendant’s agents did so without actually having the intention of
pursuing such legal action, Defendant FNCFB has committed the following violations of

1 the Federal FDCPA:

- 2 a. Engaged in conduct the natural consequence of which is to harass, oppress,
3 or abuse any person in connection with the collection of a debt, in violation
4 of 15 U.S.C. § 1692d, and
- 5 b. Engaged in false, deceptive, or misleading representation or means in
6 connection with the collection of a debt in violation of 15 U.S.C. § 1692e,
7 and
- 8 c. Has falsely represented the character and legal status of the debt in
9 violation of 15 U.S.C. § 1692e(2)(A), and
- 10 d. Has falsely uttered the representation or implication that nonpayment of
11 any debt will result in the seizure, garnishment, attachment, or sale of any
12 property or wages of any person unless such action is lawful and the debt
13 collector or creditor intends to take such action in violation of 15 U.S.C. §
14 1692e(4), and
- 15 e. Has used false representations and deceptive means to collect or attempt to
16 collect a debt in violation of 15 U.S.C. § 1692e(10), and
- 17 f. Has uttered a threat to take any action that cannot legally be taken or that is
18 not intended to be taken in violation of 15 U.S.C. § 1692e(5), and
- 19 g. Engaged in unfair or unconscionable means to collect or attempt to collect
20 any debt in violation of 15 U.S.C. § 1692f of the FDCPA.

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SECOND CAUSE OF ACTION
(VIOLATIONS OF ROSENTHAL ACT)
CAL. CIV. CODE §§ 1788-1788.32

33. Plaintiff re-alleges and incorporates by reference the above paragraphs, as though set forth fully herein.

34. By violating the FDCPA, as identified the First Cause of Action above, Defendant FNCFB has also necessarily violated the Rosenthal Act via Calif. Civil Code § 1788.17, as the Rosenthal Act has incorporated each of those provisions of the FDCPA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant as follows:

- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of costs of litigation and reasonable attorney’s fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An additional award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated into the Rosenthal Act via Calif.

1 Civ. Code §1788.17, which is cumulative and in addition to all other
2 remedies pursuant to California Civil Code § 1788.32;

- 3 • An award of actual damages pursuant to California Civil Code §
4 1788.30(a);
- 5 • An award of costs of litigation and reasonable attorney’s fees pursuant to
6 Cal. Civ. Code § 1788.30(c);

7 Pursuant to the seventh amendment to the Constitution of the United States of
8 America, Plaintiff is entitled to, and hereby demands, a trial by jury.

9 Dated: November 12, 2015

Respectfully submitted,

10 SEMNAR & HARTMAN, LLP

11 By: /s/ Jared M. Hartman
12 Jared M. Hartman, Esq.
13 Attorney for Plaintiff
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