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21 Judith Reimann
22 and Michael DaRonco

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF ALAMEDA

RH

Case No. **10-529702**

20 JUDITH REIMANN and MICHAEL
21 DaRONCO, Individually and on Behalf of All
22 Others Similarly Situated,

23 Plaintiffs,

CLASS ACTION COMPLAINT

24 v.

- 1) ROSENTHAL ACT CLAIM (CIVIL CODE § 1788
- 2) UNFAIR COMPETITION LAW CLAIM (BUSINESS & PROFESSIONS CODE § 17200)

24 ERICA L. BRACHFELD, THE BRACHFELD
25 LAW GROUP, PC, MIDLAND FUNDING,
26 LLC, MIDLAND CREDIT MANAGEMENT,
27 LLC, and MIDLAND FUNDING NCC-2
28 CORP., and DOES 1-100, inclusive,

Defendants.

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I. INTRODUCTION

1. Plaintiffs bring this case on behalf of themselves and all others similarly situated pursuant to the Rosenthal Fair Debt Collection Practices Act, Civil Code Section 1788 et. seq., and California Business & Professions Code § 17200 et seq. Three main categories of deplorable conduct are at issue: First, defendants Erica Brachfeld, an attorney, and Brachfeld Law Group lend Ms. Brachfeld's name to dunning letters sent to alleged debtors on behalf of defendant Midland Credit Management and related Midland defendants. These dunning letters are sent without prior reasonable investigation and meaningful attorney involvement. Second, the Brachfeld defendants file and pursue collection lawsuits on behalf of the Midland defendants without prior reasonable investigation and meaningful attorney involvement. Third, the Brachfeld and Midland defendants submit false affidavits and evidence in support of requests for default judgment in these collection lawsuits.

II. JURISDICTION AND VENUE

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2. This Court has personal jurisdiction over Defendants because Defendants conduct substantial business in Alameda County, have sufficient minimum contacts with this state, and otherwise purposely avail themselves of the markets in this state through their collection activities and use of the courts in this state.

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3. Venue is proper in Alameda County pursuant to Code of Civil Procedure Sections 393 and 395 because Defendants do business in Alameda County and receive significant payments from customers in Alameda County, and a substantial part of the events or omissions giving rise to the claims occurred in Alameda County. The total amount in controversy as to each Plaintiff and each member of the Proposed Class does not exceed seventy-four thousand nine-hundred and ninety-nine dollars (\$74,999) each, exclusive of interest and costs. Plaintiff disclaims any compensatory damages, punitive damages, declaratory, injunctive, or equitable relief greater than (\$74,999) per individual Class member. Plaintiff and the Proposed Class limit their total class wide claims to less than four million-nine hundred and ninety-nine thousand nine hundred and ninety-nine dollars (\$4,999,999.00).

1 **III. PARTIES**

2 4. Plaintiff Judith Reimann is a natural person and a resident of Walnut Creek,
3 California, in the County of Contra Costa.

4 5. Plaintiff Michael DaRonco is a natural person and a resident of Shingle Springs,
5 California, in the County of El Dorado.

6 6. Defendant Erica L. Brachfeld is an individual who does business and practices law
7 throughout California, including in Alameda County. She is an attorney debt collector, and is the
8 principal of The Brachfeld Law Group, PC.

9 7. Defendant The Brachfeld Law Group, PC (“BLG”) is, on information and belief, a
10 California Professional Corporation. It does business in California, including in Alameda County.
11 BLG specializes in the prosecution of collection lawsuits. Except where context suggests
12 otherwise, references to BLG also include Defendant Brachfeld.

13 8. Defendant Midland Funding, LLC (“Midland Funding”) is, on information and
14 belief, a Delaware Limited Liability Company in the business of purchasing portfolios of defaulted
15 debt. It does business in California, including in Alameda County. It regularly causes collection
16 lawsuits to be brought against California consumers, claiming to have purchased defaulted
17 consumer credit card accounts on which the named consumers allegedly owe money.

18 9. Defendant Midland Funding NCC-2 Corp. (“NCC-2 Corp.”) is, on information and
19 belief, a Delaware Corporation. It does business in California, including in Alameda County. It
20 regularly causes collection lawsuits to be brought against California consumers, claiming to have
21 purchased defaulted consumer credit card accounts on which the named consumers allegedly owe
22 money.

23 10. Defendant Midland Credit Management, Inc. (“MCM”) is, on information and
24 belief, a Kansas Corporation. It does business in California, including in Alameda County. MCM
25 coordinates closely with Midland Funding, NCC-2 Corp. and BLG in bringing state court
26 collection lawsuits. Among other functions, MCM manufactures and provides the faulty evidence
27 that is used in support of such lawsuits. (Collectively, the three Midland defendants are referred to
28 as the “Midland Entities”.)

1 11. Defendants acted each on their own behalf and also through one another and on
2 each other's behalf, by agreement, to commit the acts alleged herein. Each defendant is an agent
3 for all other defendants, and is directly and vicariously responsible for their actions, either by
4 agreement or by operation of law, including, inter alia, the laws applicable to actual or apparent
5 agency, conspiracy and attorney-client relationships as applied to debt collectors.

6 12. The true names and capacities, whether individual, corporate, associate, representative,
7 or otherwise, of defendants named herein as DOES 1-100 are unknown to plaintiffs at this time,
8 and are therefore sued by such fictitious names pursuant to Code of Civil Procedure Section 474.
9 Plaintiffs will amend this complaint to allege the true names and capacities of DOES 1 through 100
10 when they become known to plaintiffs. Each of DOES 1 through 100 is in some manner legally
11 responsible for the violations of law alleged herein.

12 13. The acts charged in this Complaint as having been done by defendants and the DOE
13 defendants were authorized, ordered, or done by their officers, agents, employees, or
14 representatives, while actively engaged in the management of the defendants' businesses or affairs.

15 **IV. FACTUAL BACKGROUND REGARDING DEFENDANTS' ACTS AND PRACTICES**

16 14. During the time period relevant to this suit, BLG has sent thousands of dunning
17 letters to alleged debtors on behalf of one or more of the Midland Entities without prior reasonable
18 investigation and meaningful attorney involvement.

19 15. Similarly, Brachfeld is listed as the attorney of record in thousands of lawsuits filed
20 to collect alleged debt from California consumers on behalf of the Midland Entities without prior
21 reasonable investigation and meaningful attorney involvement. Brachfeld thus does not actually or
22 properly fulfill the function of the attorney on these cases.

23 16. BLG thus pursues collection lawsuits on behalf of the Midland Entities with no
24 attorney properly at the helm. Many of the consumers sued incur expenses as a result, including
25 payments to BLG and Midland Entities, wages being garnished and bank accounts being attached.

26 17. BLG routinely sends these dunning letters and files these cases without first
27 reviewing any supporting documentation concerning the alleged debt being collected. BLG's non-
28 attorney/staff import computer spreadsheet data provided by the Midland Entities into dunning

1 letters and, if the letters do not produce the desired payment, into form state court complaints
2 which are filed without further attorney review. Indeed, the Midland Entities have routinely tasked
3 BLG with sending letters and suing consumers without providing BLG with any supporting
4 documentation. BLG obligingly files these lawsuits without knowledge of the particular contract
5 or account which gives rise to the claim and without analysis of the merits of the claim.

6 18. The filing of a lawsuit signed by an attorney implicitly represents that a qualified
7 attorney has done a reasonable investigation, been meaningfully involved in the decision to sue,
8 and found a good faith basis for suing. In cases filed by BLG, the implication is entirely false.

9 19. On information and belief, the Midland Entities contractually require BLG to upload
10 a daily report to the Midland Entities' computers informing the Midland Entities of all BLG
11 activity on Midland accounts. The Midland Entities are thus fully aware that BLG sends dunning
12 letters and files collection lawsuits before account documentation is available to it. Further, based
13 on the volume of cases handled by BLG, the Midland Entities know or should know that there is no
14 reasonable investigation or meaningful attorney involvement before the bulk of such letters are sent
15 and the bulk of such suits are filed.

16 20. On information and belief, neither BLG nor the Midland Entities are concerned
17 about whether there is a sufficient basis for filing a collection lawsuit or whether the amount
18 claimed is accurate, because in virtually all of the collection lawsuits filed by BLG, there is no
19 answer or responsive pleading filed by the consumers who are sued. Often this is because, on
20 information and belief, they are not served with the lawsuit (as occurred in NCC-2 Corp.'s lawsuit
21 against Mr. DaRonco, described *infra*).

22 21. BLG is required to submit "admissible evidence" in support of an application to
23 obtain a default judgment. In reality, BLG routinely submits to the state trial courts false and
24 inadequate documentation provided by the Midland Entities, taking advantage of the fact that
25 default judgments are, for the most part, issued as a ministerial function by court clerical personnel,
26 who largely rely upon the representations of the attorneys who practice before the court.

27 22. Midland Entities facilitate BLG's submission of false evidence by maintaining a
28 sweatshop of MCM employees, each tasked with signing hundreds of affidavits per day. The

1 affidavits are purportedly based on the employees' "personal knowledge" of the account
2 information. In reality, as found by Judge David A. Katz of the Northern District of Ohio in
3 *Midland Funding, LLC v. Brent* (N.D. Ohio 2009) 644 F.Supp. 2d 961, these affidavit signors have
4 little, if any, knowledge of the facts to which they attest or understanding of the contents of the
5 documents that they are signing. These MCM employees are hired merely to pull incoming
6 "affidavit" printouts from a networked printer and quickly sign them without referring to
7 underlying adequate business records. Batches of these affidavits are then placed on a computer
8 network and fed to BLG in response to BLG's "media requests," so that BLG can remotely access
9 the false affidavits and submit them to the courts.

10 23. Plaintiffs were unable to discover the violations alleged herein until less than one
11 year prior to the filing of this action.

12 **V. FACTUAL BACKGROUND REGARDING NAMED PLAINTIFFS**

13 24. The Midland Entities and BLG brought collection lawsuits against Ms. Reimann
14 and Mr. DaRonco. Midland Funding was the plaintiff in the lawsuit against Ms. Reimann (the
15 "Reimann Collection Action") and NCC-2 Corp. was the plaintiff in the lawsuit against Mr.
16 DaRonco (the "DaRonco Collection Action"). (Collectively, the Reimann Collection Action and
17 the DaRonco Collection Action are referred to as the "Underlying Lawsuits".) In the Underlying
18 Lawsuits, Midland Entities claimed to have acquired defaulted credit card accounts on which the
19 respectively named consumers allegedly owed money.

20 25. Erica Brachfeld was identified as the attorney of record in the Underlying Lawsuits.
21 However, plaintiffs are informed and believe that neither she nor any other attorney meaningfully
22 reviewed documentation relating to these lawsuits, spoke to anyone about the facts alleged in the
23 complaints therein, or even reviewed the complaints prior to filing. There was no meaningful
24 attorney involvement or investigation by Ms. Brachfeld or any other attorney in connection with
25 the filing of these lawsuits.
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1 **A. The Reimann Collection Action**

2 26. BLG filed the Reimann Collection Action on behalf of Midland Funding, LLC, in
3 the Alameda County Superior Court. BLG both dunned and sued Ms. Reimann without prior
4 meaningful attorney involvement.

5 27. Ms. Reimann filed an answer to the Reimann Collection Action, paying a fee to the
6 Court in order to do so. Ms. Reimann then retained paid counsel to represent her in the matter.
7 Shortly after Ms. Reimann’s counsel made an appearance in the case, BLG voluntarily dismissed
8 the Reimann Collection Action, but never informed Ms. Reimann or her counsel that it had done
9 so.

10 28. Since the action was brought without meaningful attorney involvement, the expenses
11 incurred by Ms. Reimann were incurred as a result of defendants’ deceptive practices.

12 **B. The DaRonco Collection Action**

13 29. BLG filed the DaRonco Collection Action on behalf of NCC-2 Corp. in the El
14 Dorado Superior Court without prior meaningful attorney involvement. Mr. DaRonco was never
15 personally served with the DaRonco Collection Action and was unaware of its existence until after
16 NCC-2 Corp. sought and obtained a default judgment in the case. The request for entry of default
17 was accompanied by the affidavit of Elizabeth Neu, an agent of the Midland Entities. In that
18 affidavit, Ms. Neu claimed to have personal knowledge of the account at issue in the DaRonco
19 Collection Action. On information and belief, key assertions in Ms. Neu’s affidavit were false,
20 including but not limited to the assertion that she had personal knowledge of the facts to which she
21 attested. On or about August 20, 2009, NCC-2 Corp. obtained a writ of execution to enforce the
22 default judgment. In or about October, 2009, Mr. DaRonco’s wages were garnished, which was
23 when he first became aware of the case. Mr. DaRonco has been deprived of hundreds of dollars in
24 wages by means of the wage garnishment. Because Mr. DaRonco was never served with and was
25 unaware of the lawsuit against him, he never had the opportunity to defend against it or to point out
26 the defects in (and inadmissibility of) the “evidence” underlying the default judgment.

1 **VI. CLASS ALLEGATIONS**

2 30. Plaintiffs bring this class action on behalf of themselves and others similarly
3 situated. The class is defined as follows:

4 All California consumers who, within the applicable period of
5 limitations, were sent dunning letters by BLG regarding a debt allegedly
6 owed to one of the Midland Entities or were sued by the Midland Entities
7 where BLG was the attorney of record.

8 31. The following persons shall be excluded from the Class: (a) Defendants and their
9 owners, subsidiaries and affiliates; (b) all persons who make a timely election to be excluded from
10 the proposed Class; (c) governmental entities; and (d) the judge(s) to whom this case is assigned
11 and any immediate family members thereof.

12 32. The Class is so numerous that joinder of all class members is impracticable.

13 33. This action involves common questions of law and fact, including the following:

14 a) Whether there was meaningful attorney involvement in dunning letters sent by
15 BLG on behalf of any Midland Entities;

16 b) Whether there was meaningful attorney involvement in Midland collection cases
17 where Erica Brachfeld was listed as attorney of record;

18 c) Whether the Midland Entities engaged in a practice of fabricating and providing
19 to BLG false affidavits in support of its requests for default judgments;

20 d) Whether injunctive and declaratory relief is available to remedy past and future
21 illegal conduct as alleged herein;

22 e) Whether Defendants violated the Rosenthal Fair Debt Collection Practices Act,
23 Civil Code Section 1788, et seq.; and

24 f) Whether Defendants violated California Business & Professions Code § 17200, et
25 seq.

26 These and other questions of law and fact common to the members of the Classes
27 predominate over any questions affecting only individual members.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs on behalf of themselves and all others similarly situated, pray for
3 the following, subject to the limitations stated in paragraph 3 of this complaint:

4 A. An order certifying this case as a class action and appointing Plaintiffs and
5 Plaintiffs' counsel to represent the Class;

6 B. A judgment awarding Plaintiffs and the Class actual, consequential, and statutory
7 damages to be determined at trial;

8 C. An Order providing restitution to Plaintiffs and the Class;

9 D. A declaratory judgment that Defendants' collection activities violate the Rosenthal
10 Fair Debt Collection Practices Act and California Business and Professions Code Section 17200 et
11 seq.;

12 E. An order enjoining Defendants from continuing the practices at issue in this
13 litigation.

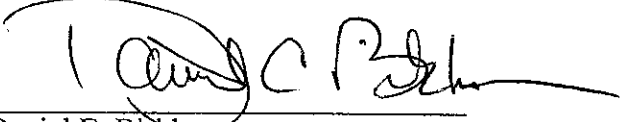
14 F. An order, or orders, including the appointment of a receiver, as may be necessary to
15 prevent the use or employment by defendants of any practice found to constitute unfair
16 competition.

17 G. An order granting attorneys' fees and costs of suit;

18 H. An order granting such other and further relief as the Court may deem just and
19 proper.

20 Dated: August 6, 2010

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