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1 **CLARK & MARKHAM LLP**
David R. Markham (State Bar No. 071814)
2 R. Craig Clark (State Bar No. 129219)
James M. Treglio (State Bar No. 228077)
3 600 "B" Street, Suite 2130
San Diego, CA 92101
4 Telephone: (619) 239-1321
Facsimile: (619) 239-5888

5 **LAW OFFICES OF BARRON E. RAMOS**
6 Attorney at Law, A Professional Corporation
Barron E. Ramos (State Bar No. 179620)
7 132 N. El Camino Real, # 303
Encinitas, California 92024
8 Telephone: (760) 274-6438
Facsimile: (760) 994-1354

9 Attorneys for Plaintiffs and the Class
10 *Additional Counsel on the Signature Page*

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 HAIDEE ESTRELLA, an individual, and
15 WILLIAM RYAN CROSLEY, an
individual, on behalf of themselves and
16 all others similarly situated, and on behalf
of the general public,

17 Plaintiffs,

18 v.

19 FREEDOM FINANCIAL NETWORK,
20 LLC, a Delaware limited liability
company;
21 FREEDOM DEBT RELIEF, INC., a
California corporation;
22 FREEDOM DEBT RELIEF, LLC, a
Delaware limited liability company;
23 GLOBAL CLIENT SOLUTIONS, LLC;
24 ROCKY MOUNTAIN BANK AND
TRUST; ANDREW HOUSSER; and
BRADFORD STROH
25 and DOES 1 through 100,

26 Defendants.

Case No.: SAC09-189 DOC (ANx)

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR UNLAWFUL,
UNFAIR AND DECEPTIVE
BUSINESS PRACTICES,
VIOLATION OF THE CREDIT
REPAIR ORGANIZATION ACT
(CROA), VIOLATION OF THE
CONSUMER LEGAL REMEDIES
ACT (CLRA), AND FOR
NEGLIGENCE**

JURY TRIAL DEMAND

1/5 ad

1 Plaintiffs HAIDEE ESTRELLA and WILLIAM CROSLEY (“Plaintiffs”), on
2 behalf of themselves and on behalf of all persons similarly situated and on behalf of
3 the general public allege the following on information on belief:

4 I.

5 INTRODUCTION

6 1. This is a class action lawsuit brought by Plaintiffs, the debtor customer
7 of Defendants Debt Resolution Partners, LLC; Freedom Debt Relief, Inc. and
8 Freedom Debt Relief, LLC, aka Freedom Debt Relief and FDR; Global Client
9 Solutions, LLC; Rocky Mountain Bank and Trust; Andrew Housser; and Bradford
10 Stroh (collectively the “FOUR PARTNERS and TWO CHIEF EXECUTIVE
11 OFFICERS” or “Defendants”). Plaintiffs seek to represent a class of debtors that
12 have purchased regulated debt management services from the FOUR PARTNERS
13 and TWO CHIEF EXECUTIVE OFFICERS.

14 2. Plaintiffs allege that the FOUR PARTNERS and TWO CHIEF
15 EXECUTIVE OFFICERS operate an elaborate scheme to defraud debtors that are
16 drowning in credit card and unsecured debt. By masquerading as unregulated debt
17 settlement negotiators, the FOUR PARTNERS, under the direction of Chief
18 Executive Officers Housser and Stroh, attempt to escape strict state consumer
19 protection regulations enacted to protect unknowing debtors. The illegal scheme is
20 more fully explained in the May 29, 2008 State of California Desist and Refrain
21 Order issued against FDR, Housser, Stroh and other related entities. (See California
22 Desist and Refrain Order, Exhibit A attached and referred to herein).

23 3. Plaintiffs allege that the services sold by the FOUR PARTNERS and
24 TWO CHIEF EXECUTIVE OFFICERS are regulated under the Check Sellers, Bill
25 Payers, and Proraters Law found in sections 12000 *et seq.* of the California Financial
26 Code (the “CSBPPL”)

1 other commercial papers serving the same purpose, or of
2 receiving money as agent of an obligor for the purpose of
3 paying bills, invoices, or accounts of such obligor, or
4 acting as a prorater, nor shall any person, without direct
5 compensation and not as an authorized agent for a utility
6 company, accept money for purpose of forwarding it to
7 others in payment of utility bills, without first obtaining a
8 license from the commissioner.”

9 9. Financial Code Section 12002.1 defines a “prorater” as

10 “a person who, for compensation, engages in whole or in
11 part in the business of receiving money or evidences
12 thereof for the purpose of distributing the money or
13 evidences thereof among creditors in payment or partial
14 payment of the obligations of the debtor.”

15 10. The contractual services provided by the Defendants fall squarely
16 within the definition of a Prorater. Specifically, the DRP Debt Reduction Agreement
17 provides in part: “DRP will act as an intermediary between Client and Client’s
18 creditors for the express purpose of attempting to negotiate with creditors of Client
19 with the intent of reducing Debts to an amount that will enable Client to pay the
20 reduced balance as full settlement of all debt.” “DRP will inform the Client of the
21 amounts and the terms and conditions of all written settlement agreements.”
22 “Beginning on [date] Client agrees to budget \$ [amount] per month. These funds are
23 to be made available each month for transfer into Client’s Special Purpose Account
24 (“SPA”) [at RMBT], which will be opened by Client per the [GCS] Authorization to
25 Debit Bank Account which is attached with this Agreement. Funds in Client’s
26 [RMBT] SPA will accrue to eventually be used for the settlement of Client’s debts
27 and for the payment of DRP’s fees. Funds to be used for settling Client’s debts to
28 creditors will be distributed from Client’s [RMBT] SPA directly to creditors after
each settlement is finalized.” (See Crosley DRP Debt Reduction Agreement, Exhibit
B attached.)

11. Despite engaging in the business of a prorater, none of the defendants

1 are licensed by the State of California. As such, the defendants' contracts and their
2 unconscionable arbitration provisions are void as a matter of law.

3 12. Additionally, defendants' contracts violate California Financial Code
4 Section 12314 which sets maximum amounts a prorater can collect from consumers
5 for its service. Specifically the amount is limited as follows:

6 "The total charges received by a prorater . . . may not
7 exceed in the aggregate twelve percent (12%) for the first
8 three thousand dollars (\$3,000), eleven percent (11%) for
9 the next two thousand dollars (\$2,000), and ten percent
10 (10%) for any of the remaining payments distributed by a
11 prorater to the creditors of a debtor."

12 13. Despite this provision, defendants' contracts require debtors to pay a
13 "retainer fee" and "service fee" equal to 15% of the "total debt owed" by the client at
14 the time of executing the contract.

15 14. California Financial Code Section 12316 provides that "if a prorater
16 contracts for, receives or makes any charge in excess of the maximum permitted by
17 this division . . . the prorater's contract with the debtor shall be void and the prorater
18 shall return to the debtor all charges received from the debtor." As such, the
19 defendants' contracts and their unconscionable arbitration provisions are void as a
20 matter of law.

21 15. Despite Defendant Debt Resolution Partners, LLC's contractual
22 attempts to have the Plaintiff subject to arbitration to redress wrongs that the FOUR
23 PARTNERS and TWO CHIEF EXECUTIVE OFFICERS have committed, the
24 Plaintiff and the similarly situated putative class members are entitled to the
25 jurisdiction of this court, and venue in this district.

26 **III.**

27 **CHOICE OF LAW/VENUE**

28 16. Defendants' form adhesion contract for services with plaintiffs and
other members of the class states that "[t]his Agreement is governed by the laws of

1 the State of California, without regard to the conflict of law rules of th[e] state [in
2 which the client resides].” Thus, the claims of all members of the class, regardless of
3 where those class members are situated, are governed by the laws of the State of
4 California as to all claims, except for the claim made under the CROA, which is
5 governed by that statute.

6 **IV.**
7 **PARTIES**

8 17. Plaintiffs HAIDEE ESTRELLA and WILLIAM CROSLY are
9 individuals with whom Defendants contracted to provide debt reduction services.
10 Plaintiffs bring this action as individuals, on behalf of a class of similarly situated
11 consumers, and as a private attorney general on behalf of the general public, pursuant
12 to California Business & Professions Code § 17204. The claims of Plaintiffs are
13 typical and representative of the claims of the absent members of the Class in that
14 FDR charged Plaintiffs for Defendants’ services in excess of that permitted by
15 California law and while acting without a license to perform the contracted services.
16 The claims are also typical in that Defendants represented to plaintiffs and the class,
17 and continue to represent to consumers, that it provides services designed to alter a
18 consumer’s credit report. The Plaintiffs paid Defendants fees for these services and
19 thereby suffered a financial injury for which restitution and/or damages from
20 Defendants are required.

21 18. Defendant DEBT RESOLUTION PARTNERS, LLC is a Delaware
22 Limited Liability Company with its principal offices located at 4945 S. Wendler
23 Drive, Suite 105, Tempe, AZ 85282. DRP advertises for and does business in the
24 state of California and throughout the United States.

25 19. Defendants FREEDOM DEBT RELIEF, INC. and FREEDOM DEBT
26 RELIEF, LLC, aka FREEDOM DEBT RELIEF (collectively “FDR”), are business

1 entities with their principal offices located at 1875 S. Grant, Suite 400, San Mateo,
2 CA 94402. FDR advertises for and does business in the state of California and
3 throughout the United States.

4 20. Defendant GLOBAL CLIENT SOLUTIONS, LLC is a Limited
5 Liability Company with its principal offices located at 9820 E. 41st Street, Suite 400,
6 Tulsa, OK 74146. GCS advertises for and does business in the state of California
7 and throughout the United States.

8 21. Defendant ROCKY MOUNTAIN BANK & TRUST is a chartered
9 Colorado state bank with its principal offices located at 101 E. Main St., Florence,
10 CO 81226. RMBT maintains a branch bank at 755 Cheyenne Meadows Rd.,
11 Colorado Springs, CO 80906, where it houses the Global Client Solutions, LLC
12 Special Purpose Account Operations for Freedom Debt Relief and Debt Resolution
13 Partners, LLC. GCS advertises for and does business in the state of California and
14 throughout the United States.

15 22. Defendant ANDREW HOUSSER is an individual, founder and Co-
16 CEO of FDR and DRP with his principal offices located at 1875 S. Grant, Suite 400,
17 San Mateo, CA 94402. HOUSSER advertises for and does business in the state of
18 California and throughout the United States.

19 23. Defendant BRADFORD STROH is an individual, founder and Co-CEO
20 of FDR and DRP with his principal offices located at 1875 S. Grant, Suite 400, San
21 Mateo, CA 94402. STROH advertises for and does business in the state of
22 California and throughout the United States.

23 24. Except as otherwise provided herein, Plaintiffs seeks restitution on
24 behalf of all persons that have paid a fee to Defendants for debt reduction services
25 during the four years preceding the filing of this complaint and who did not receive a
26 full refund of such charges.

1 25. Plaintiffs are unaware of the true names and capacities of the remaining
2 defendants sued in this action by the fictitious names DOES 1 through 100.
3 Plaintiffs will amend their complaint when those names and/or capacities become
4 known to Plaintiffs. Plaintiffs are informed and believe that each of the fictitiously
5 named defendants is in some manner responsible for the events and allegations set
6 forth in this complaint.

7 26. Each of the above named Defendants agreed among themselves and
8 with other third party co-conspirators to engage in a scheme for the purpose of
9 committing the acts alleged herein and increasing the revenues received by each of
10 the Defendants. At all material times herein mentioned, each of the Defendants was
11 the co-conspirator, joint venturer, successor, agent, aider & abettor, alter ego, and/or
12 employee of each of the remaining Defendants and was, at all relevant times, acting
13 within the course and scope of such plan, conspiracy, successorship, joint venture,
14 agency and employment. In doing the things alleged in the causes of actions stated
15 herein each and every defendant was acting within the course and scope of this
16 agency or employment and was acting with the consent, permission and
17 authorization of each of the remaining Defendants. All actions of each Defendant as
18 alleged in the causes of action stated herein were ratified and approved by every
19 other defendant or their officers or their managing agents.

20 **V.**

21 **SUBSTANTIVE ALLEGATIONS**

22 27. At all relevant times alleged herein, FDR was and is in the business of
23 providing debt reduction services to consumers. As set forth on FDR's website,
24 www.freedomdebtrelief.com: FDR's "Debt Reduction Program" is an innovative
25 solution for consumers struggling with large debt burdens and who need debt relief.
26 Freedom Debt Relief uses debt negotiation with a goal of dramatically lowering your

1 debt levels.”

2 Among other representations on their website, FDR claims the following:

- 3 * Be debt free in as little as 12-36 months!
- 4 * Lower debts down to as low as 50% of what you owe!
- 5 * Service Fee Money Back Guarantee
- 6 * Alternative to bankruptcy, debt consolidation or credit counseling
- 7 * One Simple Monthly Payment

8 28. Plaintiff, ESTRELLA, contracted with FDR for debt reduction services
9 on March 27, 2008. As part of the service agreement, FDR required that beginning
10 on April 28, 2008 plaintiffs budget \$ 576 per month to be paid into a separate bank
11 account and then used to pay creditors as well as FDR’s fees. The agreement
12 specified that plaintiffs would pay “Retainer Fees” of \$ 431.11 each month for a
13 period of four (4) months as well as additional “Service Fees” of \$ 229.95 each
14 month “until the total Retainer and Service Fees of approximately 15% of debt are
15 paid.” Under the agreement, the Retainer Fee was to equal 5% of the debt and the
16 Service Fee equal to 10% of the debt.

17 29. After about two (2) months of payments into the FDR account, plaintiffs
18 decided to end her relationship with FDR and cancel the agreement. FDR did not
19 refund any of the monies it collected from plaintiff.

20 30. Plaintiff, CROSLY, entered into a Debt Reduction Agreement with
21 Defendant Debt Resolution Partners, LLC on or about February 14, 2008 as
22 described herein. The contract was initiated by John Lehmann, Senior Debt
23 Consultant, with Freedom Debt Relief with a monthly draft start date of February 22,
24 2008 in the amount of \$1,860 for 35.9 estimated months. After Crosley paid over
25 \$16,000 into the DRP SPA account at RMBT he sought to cancel his relationship
26 with defendants. (See Exhibit B.) To date, no funds have been returned to Crosley

1 by Defendants.

2 31. On or about May 29, 2008, the Commissioner of the California
3 Department of Corporations found that FDR was engaging in business as a bill payer
4 or prorater as defined in the Check Sellers, Bill Payers and Proraters Law, and that
5 FDR was doing so without a license. The Commissioner also found that FDR was
6 overcharging consumers in violation of California Financial Code sections 12314
7 and 12314.1. FDR was ordered to cease and desist from engaging in business as a
8 bill payer and prorater unless and until they became licensed or exempt, and also
9 ordered to cease and desist from violating California Financial Code sections 12314
10 and 12314.1. A copy of that Order is attached hereto as Exhibit A.

11 32. A prorater is defined in California Financial Code section 12002.1 as
12 follows:

13 A prorater is a person who, for compensation, engages in
14 whole or in part in the business of receiving money or
15 evidences thereof for the purpose of distributing the money
16 or evidences thereof among creditors in payment or partial
17 payment of the obligations of the debtor.

18 33. California Financial Code section 12200 proscribes acting as a prorater
19 or bill payer without first obtaining a license from the Commissioner:

20 No person shall engage in the business, for compensation,
21 of selling checks, drafts, money orders, or other
22 commercial paper serving the same purpose, or of
23 receiving money as agent of an obligor for the purpose of
24 paying bills, invoices, or accounts of such obligor, or
25 acting as a prorater, nor shall any person, without direct
26 compensation and not as an authorized agent for a utility
27 company, accept money for the purpose of forwarding it to
28 others in payment of utility bills, without first obtaining a
license from the commissioner.

29 34. FDR is acting as a bill payer and/or prorater in the performance of its
30 debt reduction services since it is receiving monies for acting as an agent of the
31 consumer for the purpose of paying bills or accounts of that consumer. Indeed,

1 FDR's own service agreement states plainly that the consumer acknowledges that
2 FDR will be acting as the consumer's "Non-Exclusive Agent and Attorney-In-Fact
3 ..."

4 35. California Financial Code section 12314 provides as follows:

5 The total charges received by a prorater, or any other
6 person for the prorater's services, may not exceed in the
7 aggregate twelve percent (12%) for the first three thousand
8 dollars (\$3,000), eleven percent (11%) for the next two
9 thousand dollars (\$2,000), and ten percent (10%) for any of
10 the remaining payments distributed by a prorater to the
11 creditors of a debtor, except for payments made on
12 recurrent obligations. Recurring obligations shall be
13 defined for the purpose of this section as follows: current
14 rent payments, current utility payments, current telephone
15 bills, current alimony payments, current monthly insurance
16 premium payments, and payments made on obligations
17 which are secured by a first mortgage or first deed of trust
18 on real property.

13 (a) Notwithstanding the provisions of Section 12315, upon
14 compliance with the provisions of Sections 12315.1, and
15 12320, an origination fee of a sum not to exceed fifty
16 dollars (\$50) may be charged;

15 (b) A fee not to exceed four dollars (\$4) per disbursement
16 on recurring obligations, consisting of current rent
17 payments or obligations which are secured by a first
18 mortgage or first trust deed on real property, may be
19 charged.

18 (c) A fee not to exceed one dollar (\$1) on other recurring
19 obligations. When a debtor has not canceled or defaulted
20 on the performance of his contract with the prorater within
21 12 months after execution of the prorate contract, the
22 prorater shall refund any origination fee charged to the
23 debtor. At least once each month the prorater shall pay not
24 less than 70 percent of all funds received from the debtor to
25 the creditors of the debtor.

23 36. FDR violated California Financial Code section 12314 by charging
24 more than \$ 50 as a retainer fee, and by contracting to charge more than twelve
25 percent (12%) for the first three thousand dollars (\$3,000), eleven percent (11%) for
26 the next two thousand dollars (\$2,000), and ten percent (10%) for any of the
27

1 remaining payments distributed.

2 37. California Financial Code section 12314.1 provides as follows:

3 A cancellation fee or termination penalty may not be
4 charged to a debtor.

5 38. FDR violated California Financial Code section 12314.1 by keeping
6 plaintiffs' monies as a cancellation or termination fee.

7 39. In addition to providing debt reduction services, FDR also represents to
8 consumers that it will "request that [the consumer's] creditors report to the credit
9 rating bureaus that [the consumer's] accounts are 'settled in full,' 'settled,' 'paid,' or
10 'settled for less than the full amount.'" FDR thus represents to consumers that it will
11 attempt to alter the consumer's credit report as part of FDR's services.

12 40. The CROA, found at 15 U.S.C. § 1679, et. seq, prohibits a variety of
13 false and misleading statements, as well as fraud by credit repair organizations
14 (CROs). CROs may not receive payment before any promised service is "fully
15 performed." Services must be under written contract, which must include a detailed
16 description of the services and contract performance time. CROs must provide the
17 consumer with a separate written disclosure statement describing the consumer's
18 rights before entering into the contract. Consumers can sue to recover the greater of
19 the amount paid or actual damages, punitive damages, costs, and attorney's fees for
20 violations of the CROA.

21 41. As used in the CROA, a CRO under 15 U.S.C. § 1679a:

22 (A) means any person who uses any instrumentality of
23 interstate commerce or the mails to sell, provide, or
24 perform (or represent that such person can or will sell,
25 provide, or perform) any service, in return for the payment
of money or other valuable consideration, for the express
or implied purpose of--

26 (i) improving any consumer's credit record, credit history,
or credit rating; or

1 (ii) providing advice or assistance to any consumer with
2 regard to any activity or service described in clause (i) ...

3 42. FDR is a CRO because it represents to consumers that it will “request
4 that [the consumer’s] creditors report to the credit rating bureaus that [the
5 consumer’s] accounts are ‘settled in full,’ ‘settled,’ ‘paid,’ or ‘settled for less than the
6 full amount.’”

7 43. Under 15 U.S.C. § 1679b, the CROA proscribes certain conduct by
8 CROs, including:

9 (a)(1) make any statement, or counsel or advise any
10 consumer to make any statement, which is untrue or
11 misleading (or which, upon the exercise of reasonable care,
12 should be known by the credit repair organization, officer,
employee, agent, or other person to be untrue or
misleading) with respect to any consumer's credit
worthiness, credit standing, or credit capacity to--

13 (A) any consumer reporting agency (as defined in section
14 603(f) of this Act);(7) or

15 (B) any person--

16 (i) who has extended credit to the consumer; or

17 (ii) to whom the consumer has applied or is applying for
18 an extension of credit;

18 ...

19 (b) Payment in Advance.--No credit repair organization
20 may charge or receive any money or other valuable
21 consideration for the performance of any service which the
credit repair organization has agreed to perform for any
consumer before such service is fully performed.

22 44. In violation of the CROA, FDR collects its fee in advance of providing
23 any services. FDR also violates the CROA by requesting that credit bureaus report
24 the consumer’s accounts as ‘settled in full,’ ‘settled,’ ‘paid,’ or ‘settled for less than
25 the full amount,’ even if the creditor has received less than full payment and would
26 otherwise report a “charge off” of the remaining balance due or continue to show a

1 sum owing.

2 VI.

3 CLASS ALLEGATIONS

4 45. The relief sought in this complaint is the return of all monies
5 Defendants collected from consumers nationwide in violation of California law and
6 in violation of the CROA.

7 46. The persons for whose benefit this case is brought consists of thousands
8 of individuals whose claims, except as to amount of restitution and/or damages, are
9 otherwise identical, in that the amount of charges unlawfully collected by
10 Defendants can be calculated by reference to the payments made by class members
11 to Defendants. Therefore, the repetitive testimony of each class members at trial
12 would be impracticable, unnecessary and an inefficient use of judicial resources.
13 Moreover, the exhaustive list of consumers that have paid Defendants for debt
14 reduction services is now within the exclusive possession and control of Defendants
15 and is not now known to Plaintiffs, although the list may readily be obtained using
16 statutory discovery procedures.

17 47. Plaintiffs seek certification of the following class of consumers: "ALL
18 CONSUMERS NATIONWIDE WHO PAID DEFENDANTS FOR DEBT
19 REDUCTION SERVICES DURING THE FOUR YEARS PRECEDING THE
20 FILING OF THE COMPLAINT." Excluded from the Class are all Defendants and
21 all agents, attorneys, and employees of Defendants; all members of the California
22 judiciary sitting in judgment of this case; and, plaintiffs' attorneys and their
23 employees; and, all other persons within three degrees of consanguinity of the named
24 Defendants, attorneys, employees and judges.

25 48. There are questions of law and fact common to all class members which
26 predominate over individual questions. The common questions include, *inter alia*,

1 the following:

- 2 (a) Whether FDR was properly licensed during the class period to act as a
- 3 bill payer or prorater under California Financial Code section 12200;
- 4 (b) Whether FDR charged retainer fees in excess of that permitted by
- 5 California Financial Code section 12314;
- 6 (c) Whether FDR charged service fees in excess of that permitted by
- 7 California Financial Code section 12314;
- 8 (d) Whether FDR charged cancellation fees in violation of California
- 9 Financial Code section 12314.1;
- 10 (e) Whether FDR violated the CROA by requiring the advance payment of
- 11 fees; and
- 12 (f) Whether FDR violated the CROA by representing that it will “request
- 13 that [the consumer’s] creditors report to the credit rating bureaus that
- 14 [the consumer’s] accounts are ‘settled in full,’ ‘settled,’ ‘paid,’ or
- 15 ‘settled for less than the full amount.’”

16 49. There are no material differences in the substantive laws to be applied to

17 the claims of the class members. California law and the CROA are appropriately

18 applied to all claims pursuant to FDR’s contract for services.

19 50. The names and addresses of all class members entitled to restitution

20 and/or damages are ascertainable from the records of FDR and can be obtained in

21 discovery.

22 51. The representative Plaintiffs were injured and lost money as a result of

23 the acts of FDR, and will fairly and adequately protect the interests of the class and

24 have retained counsel competent and experienced in similar class action litigations

25 and other litigations on behalf of the general public.

26 52. The conduct of FDR with respect to the collection of fees in violation of

1 California Financial Code sections 12200, 12314 and 12314.1 as more particularly
2 described above, as well as the violations of the CROA, are unlawful, unfair and
3 deceptive business practices within the meaning of California Business and
4 Professions Code Section 17200 et seq. prohibiting such practices. As a result of
5 Defendants' unlawful, unfair and deceptive business practices, Defendants are liable
6 to make restitution of such charges, including interest on the liquidated sum from the
7 date of payment plus interest along with attorneys' fees and costs as determined by
8 the Court. Plaintiffs will amend the Complaint at the time of trial to include
9 additional consumers who are continuing to be subject to Defendants' unfair
10 business practices until such time as the practice has been enjoined. Further,
11 Plaintiffs reserve the right to supplement the restitution award after trial and until an
12 injunction is issued to include additional persons who have been damaged by the
13 unfair business practice of Defendants.

14 **VII.**

15 **ATTORNEYS' FEES**

16 53. Upon prevailing, Plaintiffs are entitled to an award of attorneys' fees
17 and costs in prosecuting this action against Defendants because:

- 18 (a) A successful outcome in this action will result in the enforcement of
19 important rights affecting the public interest by maintaining the integrity
20 of California institutions that offer debt reduction services nationwide;
- 21 (b) This action will result in a significant benefit by causing the return of
22 monies paid to Defendants by consumers which monies should not have
23 been charged or collected by Defendants, together with interest on those
24 monies;
- 25 (c) This action will result in a significant benefit by preventing one of the
26 largest debt reduction services in California from continuing to engage

- 1 in unlawful, unfair or deceptive conduct from its offices in California;
- 2 (d) Unless this action is prosecuted, the general public will not recover
- 3 those monies, and many members of the general public would not be
- 4 aware that they were damaged by Defendants' wrongful practices; and,
- 5 (e) Unless the attorneys' fees and costs are awarded against Defendants, the
- 6 general public will not be fully redressed.

7 54. Plaintiffs are also entitled to an award of attorneys' fees and costs under

8 the CROA which provides for an award of such fees in any successful action brought

9 by a consumer, pursuant to 15 U.S.C. § 1679g.

10 **VIII.**

11 **COUNT ONE**

12 (Unfair Competition – Business & Professions Code Section 17200)

13 55. Plaintiffs incorporate by reference the all allegations set forth in the

14 preceding paragraphs.

15 56. California Business and Professions Code Section 17200 prohibits any

16 “unlawful...business act or practice.” Defendants engaged in unlawful acts or

17 practices by, *inter alia*, charging Plaintiffs and other consumers fees in violation of

18 California Financial Code sections 12200, 12314 and 12314.1, by violating the

19 CROA, and by violating the California Department of Corporations' cease and desist

20 Order, all as more particularly described herein.

21 57. California Business and Professions Code Section 17200 also prohibits

22 any “fraudulent business act or practice.” Members of the public were and are likely

23 to be deceived by Defendants' business practices because Defendants do not disclose

24 that they are not licensed to act as a bill payer or prorater. Consumers are also likely

25 to believe that Defendants may contractually charge their retainer fees and service

26 fees, even though those fees exceed those permitted by law.

1 58. Business and Professions Code Section 17200 further prohibits any
2 “unfair... business act or practice.” As detailed in the preceding paragraphs,
3 Defendants’ scheme has caused and continues to cause injury to unsuspecting
4 consumers. As a result, Defendants received an unfair competitive advantage
5 through its practices in that Defendants are receiving more money than competitors
6 who comply with California Financial Code sections 12200, 12314 and 12314.1.
7 Moreover, by concealing the fact that it is not properly licensed and that it charges
8 more than permitted by law, Defendants gain an unfair competitive advantage over
9 other services who did not engage in the same deceptive conduct. As a result,
10 Defendants engaged in unfair business practices prohibited by California Business &
11 professions Code Section 17200, *et seq.*

12 59. On or about May 29, 2008, the Commissioner of the California
13 Department of Corporations found that FDR was engaging in business as a bill payer
14 or prorater as defined in the Check Sellers, Bill Payers and Proraters Law, and that
15 FDR was doing so without a license. The Commissioner also found that FDR was
16 overcharging consumers in violation of California Financial Code sections 12314
17 and 12314.1. FDR was ordered to cease and desist from engaging in business as a
18 bill payer and prorater unless and until they became licensed or exempt, and also
19 ordered to cease and desist from violating California Financial Code sections 12314
20 and 12314.1. Exhibit A.

21 60. Notwithstanding the Order to cease and desist its unlawful conduct,
22 FDR continues to engage in business as a prorater without a license and continues to
23 overcharge consumers in violation of CFC sections 12314 and 12314.1. This
24 continuing violation of the cease and desist Order is an unlawful business practice
25 within the meaning of Business & Professions Code section 17200.

26 61. As a result of Defendants’ unlawful, deceptive or unfair acts and
27

1 practices, Plaintiffs and members of the Class have been injured in amounts to be
2 proven at trial, and Defendants must be ordered to reimburse these amounts to
3 Plaintiffs and members of the Class. Defendants, and each of them, furnished the
4 means and otherwise aided and abetted violation of Business & Professions Code
5 section 17200.

6 62. Plaintiffs were personally victimized by Defendants' scheme and lost
7 money as a result of the scheme. Plaintiffs have standing to bring this claim for
8 violation of Business & Professions Code because, as set forth hereinabove,
9 Plaintiffs (a) suffered injury in fact as a result of Defendants' conduct, (b) lost money
10 as a result of Defendants' practice, and (c) complies with the requirements of section
11 382 of the Code of Civil Procedure.

12 IX.

13 COUNT TWO

14 (Violation of the CROA)

15 63. Plaintiffs incorporate by reference the all allegations set forth in the
16 preceding paragraphs.

17 64. Under 15 U.S.C. § 1679b, the CROA proscribes certain conduct by
18 CROs, including:

19 (a)(1) make any statement, or counsel or advise any
20 consumer to make any statement, which is untrue or
21 misleading (or which, upon the exercise of reasonable care,
22 should be known by the credit repair organization, officer,
employee, agent, or other person to be untrue or
misleading) with respect to any consumer's credit
worthiness, credit standing, or credit capacity to--

23 (A) any consumer reporting agency (as defined in section
24 603(f) of this Act);(7) or

25 (B) any person--

26 (i) who has extended credit to the consumer; or

27 (ii) to whom the consumer has applied or is applying for

1 an extension of credit;

2 ...

3 (b) Payment in Advance.--No credit repair organization
4 may charge or receive any money or other valuable
5 consideration for the performance of any service which the
6 credit repair organization has agreed to perform for any
7 consumer before such service is fully performed.

6 65. In violation of the CROA, Defendants collected fee in advance of
7 providing any services. Defendants also violated the CROA by requesting that credit
8 bureaus report the consumer's accounts as 'settled in full,' 'settled,' 'paid,' or
9 'settled for less than the full amount,' even if the creditor received less than full
10 payment and would otherwise report a "charge off" of the remaining balance due or
11 continue to show a sum owing.

12 X.

13 COUNT THREE

14 (For Violations of the Consumers Legal Remedies Act, Cal.Civ.Code §§ 1750 *et seq.*)

15 66. Plaintiffs incorporate by reference the all allegations set forth in the
16 preceding paragraphs.

17 67. Defendants are "persons" within the meaning of Civil Code §§ 1761(c)
18 and 1770, and sell "services" within the meaning of Civil Code §§ 1761(b) and 1770.

19 68. Plaintiffs and the Class members are consumers within the meaning of
20 Civil Code § 1761(d).

21 69. Plaintiffs' purchase of prorater services as sold by Defendants
22 constitutes a transaction within the meaning of Civil Code §§ 1761(e) and 1770.

23 70. Defendants' conduct violated and continues to violate the CLRA in at
24 least the following respects:

25 a. In violation of section 1770(a)(17) of the CLRA, Defendants
26 inserted an unconscionable provision in a contract.

1 mishandling customer funds.

2 77. As a result of this breach of duty, plaintiff and the Class have been
3 damaged in amount to be proven at trial.

4 **PRAYER**

5 WHEREFORE, Plaintiffs' and the other members of the Class request
6 judgment against Defendants and each of them as follows:

7 On the first count

- 8 1. For restitution and/or disgorgement of all monies collected by
- 9 defendants in violation of law for the Class and the Plaintiffs, according to proof;
- 10 2. For interest at the legal rate of interest on the foregoing sum;
- 11 3. For an order declaring the practices of defendants constitute a violation
- 12 of B&P Code section 17200;

13 On the second count

- 14 4. For actual damages, constituting all monies collected by defendants in
- 15 violation of the CROA for the Class and the Plaintiffs, according to proof, under 15
- 16 U.S.C. § 1679g;
- 17 5. For punitive damages under 15 U.S.C. § 1679g;

18 On the third count

- 19 6. For actual damages according to proof;
- 20 7. For interest at the legal rate of interest on the foregoing sum;
- 21 8. For an order declaring the practices of defendants constitute a violation
- 22 of the CLRA;
- 23 9. For punitive damages;

24 On the fourth count

- 25 10. For actual damages according to proof;
- 26 11. For interest at the legal rate of interest on the foregoing sum;

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On all counts

- 12. For costs of suit herein incurred;
- 13. For reasonable attorneys' fees allowed by law; and
- 14. For such other further relief as the Court deems just and proper.

Dated: March 25, 2009

CLARK & MARKHAM LLP

By:



David R. Markham

LAW OFFICES OF BARRON E. RAMOS
Barron E. Ramos

Additional Counsel:

Stuart C. Talley (SBN 180374)
KERSHAW, CUTTER, & RATINOFF LLP
 401 Watt Avenue
 Sacramento, CA 95864
 Telephone: (916) 448-9800
 Facsimile: (916) 669-4499

Charles E. Ames
CHARLES E. AMES, P.C.
 2712 Timberleaf Drive
 Carrollton, Texas 75006
 Telephone: (214) 390-8111
 Facsimile: (214) 390-8112

Thomas A. Crosley
THE CROSLEY LAW FIRM, P.C.
 McCombs Plaza, Suite 250
 755 E. Mulberry
 San Antonio, Texas 78212
 Telephone: (210) 354-4500
 Facsimile: (210) 354-4034

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DEMAND FOR JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: March 25, 2009

CLARK & MARKHAM LLP

By: 
David R. Markham

LAW OFFICES OF BARRON E. RAMOS
Barron E. Ramos

KERSHAW, CUTTER & RATINOFF LLP
Stuart C. Talley

CHARLES E. AMES, P.C.
Charles E. Ames

THE CROSLEY LAW FIRM, P C.
Thomas A. Crosley

Attorneys for Plaintiffs