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Hugo Aguilar

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**HUGO AGUILAR, individually and  
on behalf of all others similarly  
situated,**

**Plaintiff,**

**v.**

**GATESTONE & CO.  
INTERNATIONAL, INC.,**

**Defendant.**

**Case No.: '17CV1138 JAH NLS**

**CLASS ACTION**

**COMPLAINT FOR DAMAGES  
FOR VIOLATION OF:**

- I. THE FAIR DEBT  
COLLECTION  
PRACTICES ACT, 15  
U.S.C. § 1692, ET SEQ.;  
AND,**
- II. THE ROSENTHAL FAIR  
DEBT COLLECTION  
PRACTICES ACT, CAL.  
CIV. CODE § 1788, ET  
SEQ.**

**JURY TRIAL DEMANDED**

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that 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. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq, to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.
2. 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.
3. Hugo Aguilar (“Plaintiff”), individually and on behalf of all others similarly situated, brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Gatestone & Co. International, Inc. (“Defendant”) with regard to attempts by Defendant to unlawfully and abusively collect a debt allegedly owed by Plaintiff, in violation of Federal and State debt collection laws.

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- 1 4. Plaintiff alleges as follows upon personal knowledge as to himself and his own  
2 acts and experiences, and, as to all other matters, upon information and belief,  
3 including investigation conducted by his attorneys.
- 4 5. While many violations are described below with specificity, this Complaint  
5 alleges violations of the statutes cited in their entirety.
- 6 6. Unless otherwise stated, Plaintiff alleges that any violations by Defendant were  
7 knowing and intentional, and that Defendant did not maintain procedures  
8 reasonably adapted to avoid any such violation.
- 9 7. Unless otherwise indicated, the use of Defendant in this Complaint includes all  
10 agents, employees, officers, members, directors, heirs, successors, assigns,  
11 principals, trustees, sureties, subrogees, representatives, and insurers of  
12 Defendant.

13 **JURISDICTION AND VENUE**

- 14 8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692k  
15 and 28 U.S.C. § 1367 for supplemental state claims.
- 16 9. This action arises out of Defendant's violations of (i) the Fair Debt Collection  
17 Practices Act, 15 U.S.C. §§ 1692, et seq ("FDCPA"); and, (ii) the Rosenthal Fair  
18 Debt Collection Practices Act, Cal. Civ. Code §§ 1788, et seq. ("RFDCPA").
- 19 10. Because Defendant conducts business within the State of California, personal  
20 jurisdiction is established.
- 21 11. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)  
22 Plaintiff resides in the County of San Diego, State of California which is within  
23 this judicial district; (ii) the conduct complained of herein occurred within this  
24 judicial district; and, (iii) Defendant conducts business within this judicial  
25 district and is located within this judicial district as well.

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**PARTIES**

- 1
- 2 12. Plaintiff is a natural person who resides in the County of San Diego, State of
- 3 California, from whom a debt collector sought to collect a consumer debt which
- 4 was due and owing or alleged to be due and owing from Plaintiff, and is a
- 5 “debtor” as that term is defined by California Civil Code § 1788.2(h). In
- 6 addition, Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
- 7 1692a(3).
- 8 13. Plaintiff is informed and believes, and thereon alleges, that Defendant’s state of
- 9 incorporation is Delaware and its principal place of business is Phoenix,
- 10 Arizona.
- 11 14. Plaintiff is informed and believes, and thereon alleges, that Defendant, in the
- 12 ordinary course of business, regularly, on behalf of itself or others, engages in
- 13 debt collection as that term is defined by California Civil Code § 1788.2(b), and
- 14 is therefore a “debt collector” as that term is defined by California Civil Code §
- 15 1788.2(c) and 15 U.S.C. § 1692a(6).
- 16 15. This case involves money, property or their equivalent, due or owing or alleged
- 17 to be due or owing from a natural person by reason of a consumer credit
- 18 transaction. As such, this action arises out of a “consumer debt” and “consumer
- 19 credit” as those terms are defined by Cal. Civ. Code § 1788.2(f) and a “debt” as
- 20 that term is defined by 15 U.S.C. 1692a(5).

21 **FACTUAL ALLEGATIONS**

- 22 16. At all times relevant, Plaintiff is and was an individual residing within the State
- 23 of California.
- 24 17. Sometime prior to May 2015, Plaintiff incurred financial obligations to Bank of
- 25 America for a personal credit card.
- 26 18. These alleged financial obligations were money, property, or their equivalent,
- 27 which is due or owing, or alleged to be due or owing, from a natural person to
- 28 another person and were therefore “debt[s]” as that term is defined by California

1 Civil Code §1788.2(d), and a “consumer debt” as that term is defined by  
2 California Civil Code §1788.2(f).

3 19. Sometime thereafter, Plaintiff allegedly fell behind on payments owed on the  
4 alleged debt. Plaintiff disputes the validity of the debt.

5 20. As a result, Plaintiff received a written communication from Defendant  
6 by U.S. mail about a week after June 5, 2016 - which is the date on the  
7 communication.

8 21. The communication contains a defective notice under 15 U.S.C. § 1692g(a)(4)  
9 and states;

10 “If you notify this office in writing within 30 days after  
11 receiving this notice, this office will: obtain verification of  
12 the debt or obtain a copy of a judgment and mail you a  
13 copy of such judgment or verification.”

14 22. But 15 U.S.C. § 1692g(a)(4) requires a written notice containing a statement  
15 that;

16 “if the consumer notifies the debt collector in writing  
17 within the thirty-day period that the debt, or any portion  
18 thereof, is disputed, the debt collector will obtain  
19 verification of the debt or a copy of a judgment against the  
20 consumer and a copy of such verification or judgment will  
be mailed to the consumer by the debt collector.”

21 23. Through this conduct, Defendant violated 15 U.S.C. § 1692g(a)(4). It also used  
22 unfair or unconscionable means to collect or attempt to collect a debt.  
23 Consequently, Defendant violated 15 U.S.C. § 1692f too. This section is  
24 incorporated into the RFDCPA through Cal. Civ. Code § 1788.17; thus,  
25 Defendant also violated Cal. Civ. Code § 1788.17.

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**CLASS ALLEGATIONS**

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2 24. Plaintiff brings this action on behalf of himself individually, and on behalf of all  
3 others similarly situated (“the Classes”).

4 25. Plaintiff defines Class 1 as:

5 (i) all persons with addresses within the United States of  
6 America; (ii) who were sent one or more collection  
7 letter(s) by Defendant; (iii) that were substantially similar  
8 to the letter Defendant sent Plaintiff; (iv) to recover a  
9 consumer debt; (v) which was not returned undeliverable  
10 by the United States Postal Service; (vi) at any time one  
11 year prior to the date of the filing of this Action.

12 26. Plaintiff defines Class 2 as:

13 (i) all persons with addresses within the State of  
14 California; (ii) who were sent one or more collection  
15 letter(s) by Defendant; (iii) that were substantially similar  
16 to the letter Defendant sent Plaintiff; (iv) to recover a  
17 consumer debt; (v) which was not returned undeliverable  
18 by the United States Postal Service; (vi) at any time one  
19 year prior to the date of the filing of this Action.

20 27. Plaintiff refers to Class 1; and, Class 2 jointly as “The Classes.”

21 28. Defendant and their employees or agents are excluded from the Classes.

22 29. Plaintiff does not know the exact number of persons in the Classes, but believes  
23 them to be in the several hundreds, if not thousands, making joinder of all these  
24 actions impracticable.

25 30. The identity of the individual members is ascertainable through Defendant’s  
26 and/or Defendant’s agents’ records or by public notice.

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

- 1 a. Whether Defendant violated the FDCPA as described herein;
- 2 b. Whether Defendant violated the RFDCPA as described herein;
- 3 c. Whether members of the Class are entitled to the remedies under the
- 4 FDCPA;
- 5 d. Whether members of the Class are entitled to the remedies under the
- 6 RFDCPA;
- 7 e. Whether members of the Class are entitled to declaratory relief;
- 8 f. Whether members of the Class are entitled to injunctive relief;
- 9 g. Whether members of the Class are entitled to an award of reasonable
- 10 attorneys' fees and costs of suit pursuant to the FDPCA;
- 11 h. Whether members of the Class are entitled to an award of reasonable
- 12 attorneys' fees and costs of suit pursuant to the RFDPCA;
- 13 i. Whether Defendant may satisfy Defendant's affirmative defense of
- 14 bona fide error with regard to Defendant's violation of the FDCPA;
- 15 and,
- 16 j. Whether Defendant may satisfy Defendant's affirmative defense of
- 17 bona fide error with regard to Defendant's violation of the RFDCPA.

18 32. Plaintiff will fairly and adequately protect the interest of the Classes.

19 33. Plaintiff has retained counsel experienced in consumer class action litigation and  
20 in handling claims involving unlawful debt collection practices.

21 34. Plaintiff's claims are typical of the claims of the Classes, which all arise from  
22 the same operative facts involving unlawful collection practices.

23 35. A class action is a superior method for the fair and efficient adjudication of this  
24 controversy.

25 36. Class-wide damages are essential to induce Defendant to comply with the  
26 federal and State laws alleged in the Complaint.

27 37. The interests of class members in individually controlling the prosecution of  
28 separate claims against Defendant is small because the maximum statutory

1 damages in an individual action under the FDCPA and the RFDCPA is \$1,000.  
2 Management of these claims is likely to present significantly fewer difficulties  
3 than those presented in many class claims, e.g., securities fraud.

4 38. Defendant has acted on grounds generally applicable to the classes, thereby  
5 making appropriate final declaratory relief with respect to the class as a whole.

6 39. Plaintiff contemplates providing notice to the putative class members by direct  
7 mail in the form of a postcard-type notice and via Internet website.

8 40. Plaintiff requests certification of a hybrid class for monetary damages and  
9 injunctive relief.

10 **COUNT I**

11 **VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

12 **15 U.S.C. §§ 1692 ET SEQ.**

13 **[AGAINST ALL DEFENDANTS]**

14 41. Plaintiff incorporates by reference all of the above paragraphs of this Complaint  
15 as though fully stated herein.

16 42. The foregoing acts and omissions constitute numerous and multiple violations  
17 of the FDCPA, including but not limited to each and every one of the above-  
18 cited provisions of the FDCPA, 15 U.S.C. §§ 1692 et seq.

19 43. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any  
20 actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages for a  
21 knowing or willful violation in the amount up to \$1,000.00 pursuant to 15 U.S.C.  
22 § 1692k(a)(2)(A); and reasonable attorney's fees and costs pursuant to 15 U.S.C.  
23 § 1692k(a)(3) from each Defendant individually.

24 **COUNT II**

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

26 **Cal. Civ. Code § 1788, et seq.**

27 **[AGAINST ALL DEFENDANTS]**

28 44. Plaintiff incorporates by reference all of the above paragraphs of this Complaint



1 as though fully stated herein.

2 45. The foregoing acts and omissions constitute numerous and multiple violations  
3 of the RFDCPA.

4 46. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to  
5 any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages  
6 for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal.  
7 Civ. Code § 1788.30(b); and reasonable attorney fees and costs pursuant to Cal.  
8 Civ. Code § 1788.30(c) from each Defendant individually.

9 **PRAYER FOR RELIEF**

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

- 11 • That this action be certified as a class action on behalf of The Classes and  
12 Plaintiff be appointed as the representatives of The Class;
- 13 • An award of actual damages, in an amount to be determined at trial,  
14 pursuant to Cal. Civ. Code § 1788.30(a), for each plaintiff and putative  
15 class member;
- 16 • An award of actual damages, in an amount to be determined at trial,  
17 pursuant to 15 U.S.C. § 1692k(a)(1), against each named Defendant  
18 individually;
- 19 • An award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code  
20 § 1788.30(b), for each plaintiff and putative class member;
- 21 • An award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. §  
22 1692k(a)(2)(A), against each named Defendant individually;
- 23 • An award of costs of litigation and reasonable attorney's fees, pursuant to  
24 Cal. Civ. Code § 1788.30(c);
- 25 • An award of costs of litigation and reasonable attorney's fees, pursuant to  
26 15 U.S.C. § 1692k(a)(3), against each named Defendant individually; and,
- 27 • Any and all other relief that this Court deems just and proper.

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**TRIAL BY JURY**

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

Dated: June 6, 2017

Respectfully submitted,

**LAW OFFICE OF DANIEL G. SHAY**

By: s/ Daniel G. Shay  
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

HUGO AGUILAR, individually and on behalf of all others similarly situated.

(b) County of Residence of First Listed Plaintiff San Diego, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Office of Daniel G. Shay 409 Camino Del Rio South, Ste 101B San Diego, CA 92108 - 619-222-7429

DEFENDANTS

GATESTONE & CO. INTERNATIONAL, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'17CV1138 JAH NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 1692, et seq. Brief description of cause: Unlawful debt collection practices.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/06/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Daniel G. Shay

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Gatestone Accused of Unlawful Attempt to Collect Debt](#)

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