

1 Mark E. Ellis - 127159
Andrew M. Steinheimer - 200524
2 Amanda N. Griffith - 288164
ELLIS LAW GROUP LLP
3 740 University Avenue, Suite 100
Sacramento, CA 95825
4 Tel: (916) 283-8820
Fax: (916) 283-8821
5 mellis@ellislawgrp.com
asteinheimer@ellislawgrp.com
6 agriffith@ellislawgrp.com

7 Attorneys for Defendant RASH CURTIS & ASSOCIATES

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 SANDRA McMILLION, JESSICA ADEKOYA,
AND IGNACIO PEREZ, on Behalf of
13 Themselves and all Others Similarly Situated,

14 Plaintiffs,

15 v.

16 RASH CURTIS & ASSOCIATES,

17 Defendant.
18

Case No.: 4:16-cv-03396-YGR

**DEFENDANT RASH CURTIS &
ASSOCIATES' ANSWER TO PLAINTIFF'S
COMPLAINT; AND DEMAND FOR JURY
TRIAL**

19 Defendant RASH CURTIS & ASSOCIATES, (hereinafter "Defendant") hereby responds to
20 Plaintiffs' Complaint as follows:

21 1. As to paragraph 1, Defendant admits that it is a debt collection agency, but denies all
22 other allegations alleged herein. Defendant specifically denies that it "uses repeated, pre-recorded
23 voice messages, and auto-dialed calls to threaten and harass consumers in an attempt to collect."

24 2. As to paragraph 2, Defendant denies these allegations.

25 3. As to paragraph 3, Defendant lacks sufficient information and/or belief to admit
26 whether every call alleged in paragraph 3 was placed by Defendant at the date and time alleged and, on
27 that basis, denies these allegations. Defendant denies any implied allegation(s) that these purported
28 calls violated the federal Telephone Consumer Protection Act ("TCPA"), federal Fair Debt Collection

1 Practices Act (“FDCPA”) and/or, California’s Rosenthal Fair Debt Collection Practices Act
2 (“Rosenthal FDCPA”).

3 4. As to paragraph 4, Defendant denies these allegations.

4 5. As to paragraph 5, Defendant lacks sufficient information and/or belief to admit
5 whether every call alleged in paragraph 5 was placed by Defendant at the date and time alleged and, on
6 that basis, denies these allegations. Defendant denies any implied allegation that these purported calls
7 violated the TCPA, FDCPA and/or, Rosenthal FDCPA.

8 6. As to paragraph 6, Defendant denies these allegations.

9 7. As to paragraph 7, Defendant lacks sufficient information and/or belief to admit
10 whether every call alleged in paragraph 7 was placed by Defendant at the date and time alleged and, on
11 that basis, denies these allegations. Defendant denies any implied allegation that these purported calls
12 violated the TCPA, FDCPA and/or, Rosenthal FDCPA.

13 8. As to paragraph 8, Defendant lacks sufficient information and/or belief to admit or deny
14 why Plaintiffs are bringing this action against it for alleged violations of the TCPA. To the extent
15 paragraph 8 alleges (expressly or implicitly) that Defendant violated the TCPA, Defendant denies
16 those allegations.

17 9. As to paragraph 9, Defendant lacks sufficient information and/or belief to admit or deny
18 why Plaintiffs are bringing this action against it for alleged violations of the FDCPA and Rosenthal
19 FDCPA. To the extent paragraph 9 alleged (expressly or implicitly) that Defendant violated the
20 FDCPA and/or Rosenthal FDCPA, Defendant denies those allegations. Defendant specifically denies
21 that it “engaged in a campaign of harassment in an attempt to coerce payment of a consumer debt.”

22 10. As to paragraph 10, Defendant lacks sufficient information and/or belief as to Plaintiff
23 Sandra McMillion’s residency and therefore, denies the allegations in paragraph 10 on that basis.

24 11. As to paragraph 11, Defendant lacks sufficient information and/or belief as to Plaintiff
25 Jessica Adekoya’s residency and therefore, denies the allegations in paragraph 11 on that basis.

26 12. As to paragraph 12, Defendant lacks sufficient information and/or belief as to Plaintiff
27 Ignacio Perez’s residency and therefore, denies the allegations in paragraph 12 on that basis.

28 13. As to paragraph 13, Defendant admits that it is a debt collector as defined by 15 U.S.C.

1 § 1692a(6) but, denies any implicit allegations that it violated the FDCPA or Rosenthal FDCPA.
2 Defendant admits that its principal place of business is in Vacaville, California at 190 S. Orchard
3 Avenue, but denies that it is located in Suite A-205.

4 14. As to paragraph 14, Defendant denies that this Court has subject jurisdiction over the
5 matter pursuant to the Class Action Fairness Act of 2005 because no class has been certified and the
6 claims of the proposed class do not exceed the value of \$5,000,000.00.

7 15. As to paragraph 15, Defendant does not contest federal question jurisdiction.

8 16. As to paragraph 16, Defendant does not contest this action being venued in the Northern
9 District of California.

10 17. As to paragraph 17, this paragraph does not contain allegations which Defendant can
11 admit or deny as it is a statement of legislative history regarding the enactment of the TCPA. In that
12 regard, the allegations made in paragraph 17 are impermissibly argumentative and a legal conclusion.
13 To the extent that Plaintiffs implicitly allege that Defendant violated the TCPA, Defendant denies
14 those allegations.

15 18. As to paragraph 18, this paragraph does not contain allegations which Defendant can
16 admit or deny as it is a statement regarding the prohibitions under the TCPA. In that regard, the
17 allegations made in paragraph 18 are impermissibly argumentative and a legal conclusion. To the
18 extent that Plaintiffs implicitly allege that Defendant violated the TCPA, Defendant denies those
19 allegations.

20 19. As to paragraph 19, this paragraph does not contain allegations which Defendant can
21 admit or deny as it is a statement of the Federal Communication Commission's findings regarding the
22 enactment of the TCPA. In that regard, the allegations made in paragraph 19 are impermissibly
23 argumentative and a legal conclusion. To the extent that Plaintiffs implicitly allege that Defendant
24 violated the TCPA, Defendant denies those allegations.

25 20. As to paragraph 20, this paragraph does not contain allegations which Defendant can
26 admit or deny as it is a statement of the Federal Communication Commission's findings regarding the
27 enactment of the TCPA. In that regard, the allegations made in paragraph 20 are impermissibly
28 argumentative and contains legal conclusions. To the extent that Plaintiffs implicitly allege that

1 Defendant violated the TCPA, Defendant denies those allegations.

2 21. As to paragraph 21, this paragraph does not contain allegations which Defendant can
3 admit or deny as it is a statement of legislative history regarding the enactment of the FDCPA. In that
4 regard, the allegations made in paragraph 21 are impermissibly argumentative and a legal conclusion.
5 To the extent that Plaintiffs implicitly allege that Defendant violated the FDCPA, Defendant denies
6 those allegations.

7 22. As to paragraph 22, this paragraph does not contain allegations which Defendant can
8 admit or deny as it is a statement regarding the prohibitions under the FDCPA. In that regard, the
9 allegations made in paragraph 22 are impermissibly argumentative and a legal conclusion. To the
10 extent that Plaintiffs implicitly allege that Defendant violated the FDCPA, Defendant denies those
11 allegations.

12 23. As to paragraph 23, Defendant denies these allegations.

13 24. As to paragraph 24, Defendant denies these allegations.

14 25. As to paragraph 25, Defendant denies these allegations.

15 26. As to paragraph 26, Defendant denies these allegations.

16 27. As to paragraph 27, Defendant denies these allegations.

17 28. As to paragraph 28, Defendant denies these allegations.

18 29. As to paragraph 29, Defendant admits that it was assigned a medical debt for collections
19 owed by Plaintiff Ms. Adekoya. Defendant denies that it violated the TCPA, FDCPA or Rosenthal
20 FDCPA in attempting to collect the medical debt.

21 30. As to paragraph 30, Defendant denies these allegations.

22 31. As to paragraph 31, Defendant denies these allegations.

23 32. As to paragraph 32, Defendant denies these allegations.

24 33. As to paragraph 33, Defendant denies these allegations.

25 34. As to paragraph 34, Defendant denies these allegations.

26 35. As to paragraph 35, Defendant lacks sufficient information and/or belief to admit or
27 deny these allegations and on that basis, denies these allegations.

28 36. As to paragraph 36, Defendant denies these allegations.

1 37. As to paragraph 37, Defendant lacks sufficient information and/or belief to admit or
2 deny these allegations and on that basis, denies these allegations.

3 38. Paragraph 38 contains a list of purported online consumer complaints regarding
4 Defendant. These purported online consumer complaints are impermissibly argumentative and
5 irrelevant to the Plaintiffs' Complaint and the causes of action alleged therein.

6 39. As to paragraph 39, Defendant cannot admit or deny why Plaintiffs' bring this action
7 against it. To the extent the allegations in paragraph 39 imply that Defendant violated the TCPA,
8 FDCPA, or Rosenthal FDCPA, Defendant denies those allegations. Defendant additionally denies that
9 there is any class as alleged, as no class has been certified in this case, and on that basis denies each
10 and every allegation in this paragraph.

11 40. As to paragraph 40, Defendant denies that there is any class as alleged, as no class has
12 been certified in this case, and on that basis denies each and every allegation in this paragraph.

13 41. As to paragraph 41, Defendant denies that there is any class as alleged, as no class has
14 been certified in this case, and on that basis denies each and every allegation in this paragraph.

15 42. As to paragraph 42, Defendant denies that there is any class as alleged, as no class has
16 been certified in this case, and on that basis denies each and every allegation in this paragraph.

17 43. As to paragraph 43, Defendant denies that there is any class as alleged, as no class has
18 been certified in this case, and on that basis denies each and every allegation in this paragraph.

19 44. As to paragraph 44, Defendant denies that there is any class as alleged, as no class has
20 been certified in this case, and on that basis denies each and every allegation in this paragraph.

21 45. As to paragraph 45, Defendant denies that there is any class as alleged, as no class has
22 been certified in this case, and on that basis denies each and every allegation in this paragraph.

23 46. As to paragraph 46, Defendant denies that there is any class as alleged, as no class has
24 been certified in this case, and on that basis denies each and every allegation in this paragraph.

25 47. As to paragraph 47, Defendant denies that there is any class as alleged, as no class has
26 been certified in this case, and on that basis denies each and every allegation in this paragraph.

27 48. As to paragraph 48, Defendant denies that there is any class as alleged, as no class has
28 been certified in this case, and on that basis denies each and every allegation in this paragraph.

1 49. As to paragraph 49, Defendant denies that there is any class as alleged, as no class has
2 been certified in this case, and on that basis denies each and every allegation in this paragraph.

3 50. As to paragraph 50, Defendant denies that there is any class as alleged, as no class has
4 been certified in this case, and on that basis denies each and every allegation in this paragraph.

5 51. As to paragraph 51, Defendant denies that there is any class as alleged, as no class has
6 been certified in this case, and on that basis denies each and every allegation in this paragraph.

7 52. As to paragraph 52, Defendant denies that there is any class as alleged, as no class has
8 been certified in this case, and on that basis denies each and every allegation in this paragraph.

9 53. As to paragraph 53, Defendant denies that there is any class as alleged, as no class has
10 been certified in this case, and on that basis denies each and every allegation in this paragraph.
11 Defendant further denies that there is a common question of law and fact among the named Plaintiffs.

12 54. As to paragraph 54, Defendant denies that there is any class as alleged, as no class has
13 been certified in this case, and on that basis denies each and every allegation in this paragraph.

14 55. As to paragraph 55, Defendant denies that there is any class as alleged, as no class has
15 been certified in this case, and on that basis denies each and every allegation in this paragraph.

16 56. As to paragraph 56, Defendant denies that there is any class as alleged, as no class has
17 been certified in this case, and on that basis denies each and every allegation in this paragraph.

18 57. As to paragraph 57, Defendant denies that there is any class as alleged, as no class has
19 been certified in this case, and on that basis denies each and every allegation in this paragraph.

20 58. As to paragraph 58, Defendant incorporates its responses to paragraphs 1 through 57 as
21 though fully stated herein.

22 59. As to paragraph 59, Defendant denies these allegations.

23 60. As to paragraph 60, Defendant denies these allegations.

24 61. As to paragraph 61, Defendant denies these allegations.

25 62. As to paragraph 62, Defendant denies that Plaintiffs' counsel is entitled to an award of
26 attorneys' fees for any alleged violations of the TCPA as the TCPA does not contain a fee-shifting
27 provision. Defendant denies that Plaintiffs are entitled to an award of costs. Defendant further denies
28 that it violated the TCPA.

1 63. As to paragraph 63, Defendant incorporates its responses to paragraphs 1 through 60 as
2 though fully set forth herein.

3 64. As to paragraph 64, Defendant denies these allegations.

4 65. As to paragraph 65, Defendant denies these allegations.

5 66. As to paragraph 66, Defendant denies these allegations.

6 67. As to paragraph 67, Defendant denies that Plaintiffs' counsel is entitled to an award of
7 attorneys' fees for any alleged violations of the TCPA as the TCPA does not contain a fee-shifting
8 provision. Defendant denies that Plaintiffs are entitled to an award of costs. Defendant further denies
9 that it violated the TCPA.

10 68. As to paragraph 68, Defendant incorporates its responses to paragraphs 1 through 67 as
11 though fully set forth herein.

12 69. As to paragraph 69, Defendant denies these allegations.

13 70. As to paragraph 70, Defendant denies these allegations.

14 71. As to paragraph 71, Defendant incorporates its responses to paragraphs 1 through 70 as
15 through fully set forth herein.

16 72. As to paragraph 72, Defendant denies these allegations.

17 73. As to paragraph 73, Defendant denies these allegations.

18 74. As to paragraph 74, Defendant denies these allegations.

19 Pursuant to Federal Rule of Civil Procedure 8(c), Defendant sets forth the following matters
20 constituting an avoidance or affirmative defense:

21 **FIRST AFFIRMATIVE DEFENSE**

22 Plaintiffs' Complaint (and the causes of action alleged therein) fails to state facts sufficient to
23 constitute a cause of action against Defendant.

24 **SECOND AFFIRMATIVE DEFENSE**

25 Defendant alleges that the Complaint (and each cause of action therein) is barred in whole or in
26 part, by the applicable statutes of limitations.

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1 are not adequate representatives for the putative classes.

2 **TENTH AFFIRMATIVE DEFENSE**

3 Plaintiffs' claims are barred because neither Plaintiff nor the members of the putative classes
4 have suffered the type of harm which the TCPA was designed to protect.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 Defendant hereby gives notice that it intends to rely upon any other affirmative defenses as
7 may become available and apparent during discovery in this action and reserves the right to amend its
8 Answer to assert such defenses.

9 **WHEREFORE**, Defendant prays for:

- 10 1. That Plaintiffs take nothing from this answering Defendant by this Complaint;
11 2. That Defendant be awarded judgment in this action;
12 3. For attorneys' fees incurred herein, pursuant to statute;
13 4. For costs of suit incurred herein; and
14 5. For such other and further relief as the Court deems proper.

15 Dated: July 18, 2016

ELLIS LAW GROUP LLP

17 By /s/ Amanda N. Griffith

18 Amanda N. Griffith
19 Attorney for Defendant
RASH CURTIS & ASSOCIATES

20 **DEMAND FOR JURY TRIAL**

21 Defendant RASH CURTIS & ASSOCIATES hereby demands a jury trial in this matter.

23 Dated: July 18, 2016

ELLIS LAW GROUP LLP

25 By /s/ Amanda N. Griffith

26 Amanda N. Griffith
27 Attorney for Defendant
RASH CURTIS & ASSOCIATES