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10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 **LEO BYRNE AND**
MINOR CHILD D.B.,

14 Plaintiffs,

15 v.

16 **EXPRESS SCRIPTS, INC.,**
ACCREDO HEALTH GROUP,
 17 **INC., AND**
 18 **NATIONAL RECOVERY**
AGENCY,

19 Defendants.

Case No.: 8:22-cv-00934

COMPLAINT FOR DAMAGES
FOR VIOLATIONS OF:

- 1.) **FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. §§ 1692 ET SEQ.; AND**
- 2.) **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT CAL CIV §§ 1788, ET SEQ.**
- 3.) **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
- 4.) **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
- 5.) **NEGLIGENCE**

DEMAND FOR JURY TRIAL

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1 INTRODUCTION

- 2 1. This is a case about two pharmacies and their collection agency who failed to
3 properly bill the co-pay assist program for a local fireman and his disabled son.
4 The patients properly provided their co-pay assist program information, it was
5 acknowledged by the pharmacies on numerous occasions, yet the pharmacies sent
6 the improperly billed co-pays to collections anyway, causing the fireman to
7 forego and/or be denied medicine he and his disabled son both desperately
8 needed.
- 9 2. **LEO BYRNE** (“Plaintiff Byrne”) and **MINOR CHILD D.B.** (“Plaintiff Minor
10 Child”) (collectively referred to as “Plaintiffs”), by their attorney, bring this
11 action for punitive damages, actual damages, statutory damages, attorneys fees,
12 and costs, against **EXPRESS SCRIPTS, INC.** (“Defendant ESI”), **ACCREDO**
13 **HEALTH GROUP, INC.** (“Defendant AHG”) and **NATIONAL**
14 **RECOVERY AGENCY** (“Defendant NRA”) (collectively referred to as
15 “Defendants”) for violations of the Fair Debt Collection Practices Act, 15 U.S.C.
16 §§ 1692 et seq. (“FDCPA”), the Rosenthal Fair Debt Collection Practices Act,
17 Cal. Civ. Code §§ 1788 et seq. (“RFDCPA”), both of which prohibit debt
18 collectors from engaging in abusive, deceptive and unfair practices, and the torts
19 of Negligence, and Intentional Infliction of Emotional Distress.
- 20 3. Plaintiffs make these allegations on information and belief, with the exception
21 of those allegations that pertain to the Plaintiffs, or to the Plaintiffs’ counsel,
22 which Plaintiffs allege on personal knowledge.
- 23 4. While many violations are described below with specificity, this Complaint
24 alleges violations of the statutes cited in their entirety.
- 25 5. All violations by Defendants were knowing, willful, and intentional, and
26 Defendants did not maintain procedures reasonably adapted to avoid any such
27 violations.

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1 6. Unless otherwise indicated, the use of a Defendant’s name in this Complaint
2 includes all agents, principles, managing agents, employees, officers, members,
3 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
4 representatives, and insurers of those Defendants named.

5 **JURISDICTION AND VENUE**

6 7. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
7 that such actions may be brought and heard before “any appropriate United States
8 district court without regard to the amount in controversy,” 28 U.S.C. § 1331,
9 which grants this court original jurisdiction of all civil actions arising under the
10 laws of the United States, and pursuant to 28 U.S.C. § 1367 for pendent state law
11 claims.

12 8. This action arises out of Defendants’ violations of the FDCPA, the RFDCPA,
13 and the torts of Negligence, and Intentional Infliction of Emotional Distress.

14 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the acts and
15 transactions occurred here, Plaintiffs reside here, and Defendants transact
16 business here.

17 **FDCPA AND RFDCPA**

18 10. In enacting the FDCPA, Congress found that:

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

23 b. Existing laws and procedures for redressing these injuries are inadequate to
24 protect consumers.

25 c. Means other than misrepresentation or other abusive debt collection
26 practices are available for the effective collection of debts.

27 d. Abusive debt collection practices are carried on to a substantial extent in
28 interstate commerce and through means and instrumentalities of such

1 commerce. Even where abusive debt collection practices are purely intrastate
2 in character, they nevertheless directly affect interstate commerce.

3 e. It is the purpose of this title to eliminate abusive debt collection practice by
4 debt collectors, to insure that those debt collectors who refrain from using
5 abusive debt collection practices are not competitively disadvantaged, and to
6 promote consistent State action to protect Consumers against debt collection
7 abuses. 15 U.S.C. § 1692.

8 11. Similarly, when enacting the RFDCPA, the California Legislature found that:

9 The banking and credit system and grantors of credit to consumers are
10 dependent upon the collection of just and owing debts. Unfair or
11 deceptive collection practices undermine the public confidence which
12 is essential to the continued functioning of the banking and credit
13 system and sound extensions of credit to consumers. Cal. Civil Code
§ 1788.1(a)(1).

14 12. The FDCPA and the RFDCPA are both strict liability statutes. That is, a
15 plaintiff need not prove intent or knowledge on the part of the debt collector to
16 establish liability. *See Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055,
17 1060-61 (9th Cir. 2011); *Donohue v. Quick Collect*, 592 F.3d 1027, 1030 (“[t]he
18 FDCPA is a strict liability statute that makes debt collectors liable for violations
19 that are not knowing or intentional”).

20 13. To further protect consumers, claims under the FDCPA and RFDCPA are to be
21 judged according to the “least sophisticated debtor” or “least sophisticated
22 consumer” standard. *Gonzales* at 1061. This standard is lower than the
23 “reasonable debtor” standard, and is specifically designed to protect consumers
24 of below average and sophistication or intelligence. *Id.* In addition, a plaintiff
25 need not even have actually been misled or deceived by the debt collector’s
26 communication. Rather, liability depends on whether the *hypothetical* least
27 sophisticated debtor – someone who is uninformed and naïve – would have
28

1 likely been misled. *Id.*; see also *Tourgeman v. Collins Financial Servs.*, 755
2 F.3d 1109, 1119 (9th Cir. 2014).

3 PARTIES

4 14. Plaintiffs Leo Byrne and Minor Child D.B. are natural persons who reside in
5 Orange County, California. Plaintiffs are “consumers” as that term is defined by
6 15 U.S.C. § 1692a(3) and “Debtors” as that term is defined by California Civil
7 Code § 1788.2(h). Plaintiff Minor Child is a “disabled persons” as that term is
8 defined in subdivision (g) of Cal. Civ. Code § 1761.

9 15. Defendant Express Scripts, Inc. is a Delaware corporation operating from an
10 address of One Express Way, St Louis, MO 63121, and is a “Debt Collector” as
11 that term is defined by 15 U.S.C. § 1692a(6) and Cal. Civ. Code § 1788.2(c)
12 because it regularly uses the mails and/or the telephone to collect, or attempt to
13 collect, directly or indirectly, defaulted consumer debts that it did not originate. It
14 attempts to collect debts from consumers in virtually every state, including
15 consumers in the State of California. One of its primary business purposes is the
16 collection of defaulted consumer debts, and, in fact was acting as a debt collector
17 as to the delinquent consumer debt it attempted to collect from Plaintiffs.

18 16. Defendant Accredo Health Group, Inc. is a Delaware corporation operating from
19 an address of One Espress Way, St. Louis, MO 63121, and is a “Debt Collector”
20 as that term is defined by 15 U.S.C. § 1692a(6) and Cal. Civ. Code § 1788.2(c)
21 because it regularly uses the mails and/or the telephone to collect, or attempt to
22 collect, directly or indirectly, defaulted consumer debts that it did not originate. It
23 attempts to collect debts from consumers in virtually every state, including
24 consumers in the State of California. One of its primary business purposes is the
25 collection of defaulted consumer debts, and, in fact was acting as a debt collector
26 as to the delinquent consumer debt it attempted to collect from Plaintiffs.

27 17. Defendant National Recovery Agency is a Pennsylvania corporation operating
28 from an address of 2491 Paxton Street Harrisburg PA 17111 and is a “Debt

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