

1 3. SIMMONS is a natural person.

2 4. At all times relevant to this complaint, SIMMONS is a citizen of Washington and
3 resided in the City of Monroe, Snohomish County, Washington.

4 5. SUPLER is a natural person.

5 6. At all times relevant to this complaint, SUPLER is a citizen of North Carolina and
6 resided in the City of Raleigh, Wake County, North Carolina.

7 7. At all times relevant to this complaint, ARS NATIONAL SERVICES, INC.
8 ("ARS") is a for-profit corporation existing pursuant to the laws of the State of California. ARS
9 maintains its principal business address at 960 South Andreasen Drive, Suite B, City of
10 Escondido, San Diego County, California.

11 8. Defendants, JOHN AND JANE DOES 1 through 25 inclusive, are sued under
12 fictitious names as their true names and capacities are yet unknown to Plaintiffs. Plaintiffs will
13 amend this complaint by inserting the true names and capacities of these DOE defendants once
14 they are ascertained.

15 **II. JURISDICTION & VENUE**

16 9. With respect to Plaintiffs' claims under the FDCPA, jurisdiction of this Court
17 arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

18 10. Declaratory relief is available pursuant to under 28 U.S.C. §§ 2201, 2202.

19 11. Venue is appropriate in this federal district pursuant to 28 U.S.C. § 1391(b)
20 because a substantial part of the events giving rise to Plaintiffs' claims occurred within this
21 federal judicial district, and because all the Defendants reside in the State of California within the
22 meaning of 28 U.S.C. § 1391(b) and (c).

23 **III. PRELIMINARY STATEMENT**

24 12. Plaintiffs, on their own behalf and on behalf of the class they seek to represent,
25 and demanding a trial by jury, bring this action for the illegal practices of the Defendants who
26 used false, deceptive and misleading practices, and other illegal practices, in connection with
27 their attempts to collect alleged debts from the Plaintiffs and others. The Plaintiffs allege that the
28 Defendants' collection practices violate the Fair Debt Collection Practices Act, 15 U.S.C. §§

1 1692 *et seq.* ("FDCPA").

2 13. Such practices include, *inter alia*:

3 (a) Leaving telephonic voice messages for consumers, which fail to
4 provide meaningful disclosure of Defendants' identity;

5 (b) Leaving telephonic voice messages for consumers, which fail to
6 disclose that the call is from a debt collector; and

7 (c) Leaving telephonic voice messages for consumers, which fail to
8 disclose the purpose or nature of the communication (i.e. an
9 attempt to collect a debt).

10 14. The FDCPA regulates the behavior of collection agencies attempting to collect a
11 debt on behalf of another. The United States Congress has found abundant evidence of the use of
12 abusive, deceptive, and unfair debt collection practices by many debt collectors, and has
13 determined that abusive debt collection practices contribute to a number of personal
14 bankruptcies, marital instability, loss of jobs, and invasions of individual privacy. Congress
15 enacted the FDCPA to eliminate abusive debt collection practices by debt collectors, to ensure
16 that those debt collectors who refrain from using abusive debt collection practices are not
17 competitively disadvantaged, and to promote uniform State action to protect consumers against
18 debt collection abuses. 15 U.S.C. § 1692(a) - (e).

19 15. The FDCPA is a strict liability statute, which provides for actual or statutory
20 damages upon the showing of one violation. The Ninth Circuit has held that whether a debt
21 collector's conduct violates the FDCPA should be judged from the standpoint of the "least
22 sophisticated debtor." *Baker v. G.C. Services Corp.*, 677 F.2d 775, 778 (9th Cir. 1982).

23 16. To prohibit harassment and abuses by debt collectors the FDCPA, at 15 U.S.C. §
24 1692d, provides that a debt collector may not engage in any conduct the natural consequence of
25 which is to harass, oppress, or abuse any person in connection with the collection of a debt and
26 names a non-exhaustive list of certain *per se* violations of harassing and abusive collection
27 conduct. 15 U.S.C. § 1692d(1)-(6). Among the *per se* violations is the placement of telephone
28 calls without meaningful disclosure of the caller's identity, 15 U.S.C. § 1692d(6).

1 17. To prohibit deceptive practices, the FDCPA, at 15 U.S.C. § 1692e, outlaws the
2 use of false, deceptive, and misleading collection letters and names a non-exhaustive list of
3 certain *per se* violations of false and deceptive collection conduct. 15 U.S.C. § 1692e(1)-(16).
4 Among these *per se* violations are: the failure by debt collectors to disclose in initial oral
5 communications that the debt collector is attempting to collect a debt and that any information
6 obtained will be used for that purpose, and the failure to disclose in subsequent oral
7 communications with consumers that the communication is from a debt collector, 15 U.S.C. §
8 1692e(11).

9 18. The Plaintiffs, on behalf of themselves and all others similarly situated, seek
10 statutory damages, attorney fees, costs, and all other relief, equitable or legal in nature, as
11 deemed appropriate by this Court, pursuant to the FDCPA and all other common law or statutory
12 regimes. The Plaintiffs, on behalf of themselves and all others similarly situated, request that
13 they and the class members be awarded statutory, common law, or actual damages payable by
14 the Defendants.

15 **IV. FACTS REGARDING KOBY**

16 19. KOBY is informed and believes, and on that basis alleges, that sometime prior to
17 September 2008 he allegedly incurred a financial obligation arising out of a transaction in which
18 the money, property, insurance, or services which are the subject of the transaction are primarily
19 for personal, family, or household purposes and defaulted on that obligation (“Koby
20 Obligation”).

21 20. The alleged Koby Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

22 21. KOBY is, at all times relevant to this complaint, a “consumer” as that term is
23 defined by 15 U.S.C. § 1692a(3).

24 22. KOBY is informed and believes, and on that basis alleges, that sometime prior to
25 September 2008, the creditor of the Koby Obligation either directly or through intermediate
26 transactions assigned, placed, transferred, or sold the debt to ARS for collection.

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V. FACTS REGARDING SIMMONS

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23. SIMMONS is informed and believes, and on that basis alleges, that sometime prior to April 2009 he allegedly incurred a financial obligation arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and defaulted on that obligation (“Simmons Obligation”).

24. The alleged Simmons Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

25. SIMMONS is, at all times relevant to this complaint, a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

26. SIMMONS is informed and believes, and on that basis alleges, that sometime prior to April 2009, the creditor of the Simmons Obligation either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to ARS for collection.

27. To date, SIMMONS has not received any written communications from ARS.

VI. FACTS REGARDING SUPLER

28. SUPLER is informed and believes, and on that basis alleges, that sometime prior to December 2008 he allegedly incurred a financial obligation arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and defaulted on that obligation (“Supler Obligation”).

29. The alleged Supler Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

30. SUPLER is, at all times relevant to this complaint, a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

31. SUPLER is informed and believes, and on that basis alleges, that sometime prior to December 2008, the creditor of the Supler Obligation either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to ARS for collection.

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VII. FACTS COMMON TO ALL PLAINTIFFS

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2 32. ARS collects, and attempts to collect, debts incurred, or alleged to have been
3 incurred, for personal, family, or household purposes on behalf of creditors using interstate
4 commerce or the mails.

5 33. ARS is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

6 34. Within the one year immediately preceding the filing of this complaint, ARS
7 contacted each of the Plaintiffs via telephone in an attempt to collect their respective alleged
8 debts.

9 35. Within the one year immediately preceding the filing of this complaint, each of
10 the Plaintiffs received from ARS at least one telephonic voice message on their home answering
11 machines and/or cellular telephones ("Messages").

12 36. Each of the Messages was left, or caused to be left, by persons employed by ARS
13 in connection with their attempt to collect a "debt" as defined by 15 U.S.C. §1692a(5).

14 37. Each of the Messages uniformly failed to:

- 15 (a) Provide meaningful disclosure of ARS's identity as the caller;
16 (b) Disclose that the communication was from a debt collector; and
17 (c) Disclose the purpose or nature of the communication (i.e., an
18 attempt to collect a debt).

19 38. Each of the Messages is a "communication" as defined by 15 U.S.C. § 1692a(2).

20 39. An example of three such Messages are transcribed as follows:

21 This is Robin calling for Michael Koby, if you could return my call
22 at 800-440-6613; my direct extension is 3171. Please refer to your
23 Reference Number as 15983225. [Received October 14, 2008].

24 ***

25 Hey John, uh, it's Mike Mazzouli with ARS National. Umm, there
26 appears to be some documents here in my office, uh, John at this
27 point your involved. Call me as soon as you can. My direct number
28 and direct extension is 800-440-6613; I'm at extension 3697.
Thank you. [Received on or about December 23, 2008].

1 This is Brian Cooper. This call is for Mike Simmons, I need you to
2 return this call as soon as you get this message 877-333-3880,
3 extension 2571. [Received on April 9, 2009].

4 40. Each of the Messages is false, deceptive, and misleading in that the natural
5 consequence of these communications is to harass, oppress, or abuse the least sophisticated
6 consumer and other persons in violation of the FDCPA.

7 41. Each of the Messages is false, deceptive, and misleading insofar as ARS failed to
8 give meaningful disclosure of its identity, disclose the purpose of its call, or disclose that ARS is
9 a debt collector, thereby circumventing Congress's intent to permit the Plaintiffs to make an
10 informed decision as to whether they wished to speak with a debt collector.

11 42. The Plaintiffs are informed and believe, and on that basis allege, that Defendants,
12 JOHN AND JANE DOES 1 through 25 inclusive, are natural persons and/or business entities all
13 of whom reside or are located within the United States who personally created, instituted and,
14 with knowledge that such practices were contrary to law, acted consistent with and oversaw
15 policies and procedures used by the employees of ARS that are the subject of this complaint.
16 Those Defendants personally control the illegal acts, policies, and practices utilized by ARS and,
17 therefore, are personally liable for all of the wrongdoing alleged in this Complaint.

18 **VIII. POLICIES AND PRACTICES COMPLAINED OF**

19 43. It is the Defendants' policy and practice to leave telephonic voice messages for
20 consumers and other persons, such as the Messages, that uniformly fail to:

- 21 (a) Provide meaningful disclosure of ARS's identity as the caller;
- 22 (b) Disclose that the communication is from a debt collector; and
- 23 (c) Disclose the purpose or nature of the communication.

24 44. On information and belief, the Messages, as alleged in this complaint under the
25 Facts Common to All Plaintiffs, number at least in the thousands, all of which uniformly fail to:

- 26 (a) Provide meaningful disclosure of ARS's identity as the caller;
- 27 (b) Disclose that the communication is from a debt collector; and
- 28 (c) Disclose the purpose or nature of the communication.

IX. CLASS ALLEGATIONS

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2 45. This action is brought as a class action. Plaintiffs bring this action on behalf of
3 themselves and on behalf of all other persons similarly situated pursuant to Rule 23 of the
4 Federal Rules of Civil Procedure.

5 46. The Plaintiff Class consists of all persons with addresses in the United States of
6 America who received a telephonic voice message from ARS left after one-year immediately
7 preceding the commencement of this civil action up through and including the date of
8 preliminary class certification, which message failed to meaningfully identify ARS as the caller,
9 disclose that the communication was from a debt collector, or state the purpose or nature of the
10 communication.

11 47. The identities of all class members are readily ascertainable from the records of
12 ARS and those companies and governmental entities on whose behalf ARS attempts to collect
13 debts.

14 48. Excluded from the Plaintiff Class are the Defendants and all officers, members,
15 partners, managers, directors, and employees of ARS, Defendants, and their respective
16 immediate families, and legal counsel for all parties to this action and all members of their
17 immediate families.

18 49. The class period is one year prior to the filing of the initial complaint in this
19 action for all claims under the FDCPA and continues up to and including the date of preliminary
20 class certification.

21 50. There are questions of law and fact common to the Plaintiff Class, which common
22 issues predominate over any issues involving only individual class members. Those principal
23 issues are: whether the Defendants' telephonic voice messages, such as the Messages, violate 15
24 U.S.C. §§ 1692d(6) and 1692e(11).

25 51. The Plaintiffs' claims are typical of the class members, as all are based upon the
26 same facts and legal theories.

27 52. The Plaintiffs will fairly and adequately protect the interests of the Plaintiff Class
28 defined in this Complaint. The Plaintiffs have retained counsel with experience in handling

1 consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiffs nor their
2 attorneys have any interests, which might cause them not to vigorously pursue this action.

3 53. This action has been brought, and may properly be maintained, as a class action
4 pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a
5 well-defined community interest in the litigation:

- 6 (a) **Numerosity:** The Plaintiffs are informed and believe, and on that basis allege,
7 that the Plaintiff Class defined above is so numerous that joinder of all members
8 would be impractical.
- 9 (b) **Common Questions Predominate:** Common questions of law and fact exist as to
10 all members of the Plaintiff Class and those questions predominate over any
11 questions or issues involving only individual class members. The principal issues
12 are: whether the Defendants' telephonic voice messages, such as the Messages,
13 violate 15 U.S.C. §§ 1692d(6) and 1692e(11).
- 14 (c) **Typicality:** The Plaintiffs' claims are typical of the claims of the class members.
15 The Plaintiffs and all members of the Plaintiff Class have claims arising out of the
16 Defendants' common uniform course of conduct complained of herein.
- 17 (d) **Adequacy:** The Plaintiffs will fairly and adequately protect the interests of the
18 class members insofar as Plaintiffs have no interests that are adverse to the absent
19 class members. The Plaintiffs are committed to vigorously litigating this matter.
20 Plaintiffs have also retained counsel experienced in handling consumer lawsuits,
21 complex legal issues, and class actions. Neither the Plaintiffs nor their counsel
22 have any interests which might cause them not to vigorously pursue the instant
23 class action lawsuit.
- 24 (e) **Superiority:** A class action is superior to the other available means for the fair
25 and efficient adjudication of this controversy because individual joinder of all
26 members would be impracticable. Class action treatment will permit a large
27 number of similarly situated persons to prosecute their common claims in a single
28 forum efficiently and without unnecessary duplication of effort and expense that

1 individual actions would engender. An important public interest will be served by
2 addressing the matter as a class action, substantial expenses to the litigants and to
3 the judicial system will be realized, and the potential inconsistent or contradictory
4 adjudications will be avoided as contemplated by Rule 23(b)(1) of the Federal
5 Rules of Civil Procedure.

6 54. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil
7 Procedure is also appropriate in that:

- 8 (a) The questions of law and fact common to members of the Plaintiff Classes
9 predominate over any questions affecting an individual member; and
10 (b) A class action is superior to other available methods for the fair and efficient
11 adjudication of the controversy.

12 55. Plaintiffs request certification of a hybrid class combining the elements of Rule
13 23(b)(2) for equitable relief and Rule 23(b)(3) for monetary damages.

14 **X. FIRST CAUSE OF ACTION**
15 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**
16 **(AGAINST ALL DEFENDANTS)**

17 56. Plaintiffs reallege and incorporate by reference the allegations in the preceding
18 paragraphs of this Complaint.

19 57. Defendants violated the FDCPA. Defendants' violations with respect to the
20 Messages include, but are not limited to, the following:

- 21 (a) Placing telephone calls without providing meaningful disclosure of ARS's
22 identity as the caller in violation of 15 U.S.C. § 1692d(6);
23 (b) Placing telephone calls without disclosing the nature or purpose of the call
24 in violation of 15 U.S.C. § 1692d(6);
25 (c) Failing to disclose in its initial communication with the consumer that
26 ARS is attempting to collect a debt and that any information obtained will
27 be used for that purpose, which constitutes a violation of 15 U.S.C. §
28 1692e(11); and
(d) Failing to disclose in all oral communications that ARS is a debt collector

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in violation of 15 U.S.C. § 1692e(11).

XI. PRAYER FOR RELIEF

58. WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and in favor of the Plaintiff Class as follows:

A. For the FIRST CAUSE OF ACTION:

- (1) An order certifying that the First Cause of Action may be maintained as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiffs and the undersigned counsel to represent the Plaintiff Class as previously set forth and defined above;
- (2) An award of the maximum statutory damages for the Plaintiffs and the Plaintiff Class pursuant to 15 U.S.C. § 1692k(a)(B);
- (3) Declaratory relief adjudicating that the Defendants' telephone messages violate the FDCPA;
- (4) Attorney's fees, litigation expenses, and costs pursuant to 15 U.S.C. § 1692k(a)(B)(3); and
- (5) For such other and further relief as may be just and proper.

SCHROTH & SCHROTH
Attorneys for Plaintiffs, MICHAEL P. KOBY, MICHAEL SIMMONS, JONATHAN W. SUPLER, and all others similarly situated

DATED: April 13, 2009

By: s/ Robert E. Schroth, Jr.
ROBERT E. SCHROTH, JR, ESQ.
(SBN 212936)

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Michael P. Koby, et. al.

(b) County of Residence of First Listed Plaintiff Harris, Texas (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

SCHROTH & SCHROTH; 2044 First Avenue, Suite 200, San Diego, CA 92101; (619) 233-7521

DEFENDANTS

ARS NATIONAL SERVICES, INC. a California Corporation; and JOHN AND JANE DOES 1 through 25 inclusive

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

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

Attorneys (If Known)

09 CV 078 U JAH

JMA

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

- 1 U.S. Government Plaintiff
X 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
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 grid of categories for the nature of the suit, including Contract, Real Property, Personal Injury, Prisoner Petitions, Labor, Immigration, Forfeiture/Penalty, Social Security, Federal Tax Suits, Bankruptcy, and Other Statutes.

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

- X 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
7 Appeal to District Judge from Magistrate Judgment

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: Class action complaint for violations of the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23: [] DEMAND \$: 500,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

11/03/2008

[Signature]

FOR OFFICE USE ONLY

RECEIPT # 1162097 AMOUNT 350.5 APPLYING IFP JUDGE MAG. JUDGE

4/15/09

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

162097 - SR

**April 15, 2009
15:12:42**

Civ Fil Non-Pris

USAO #: 09CV0780

Judge.: JOHN A HOUSTON

Amount.: \$350.00 CK

Check#: BC#4705

Total-> \$350.00

**FROM: KOBY V. ARS NAT. SVCS.
DOES 1 - 25
CIVIL FILING**