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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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10 UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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14 ELENA M. DEL CAMPO, on behalf of
herself and all others similarly situated,

CIV. NO.

COL-21151 PVT

15 Plaintiff,

COMPLAINT CLASS ACTION

16 v.

COMPLAINT FOR VIOLATION OF
17 THE FAIR DEBT COLLECTION
PRACTICE ACT, THE CIVIL
18 RIGHTS ACT, THE
19 CALIFORNIA UNFAIR BUSINESS
PRACTICES ACT AND THE
20 CALIFORNIA CONSTITUTION

21 GEORGE KENNEDY, AMERICAN
CORRECTIVE COUNSELING
SERVICES, INC., DON R. MEALING
22 BRUCE D. RAYE, LYNN R. HANSEY a/k/a
R.D. DAVIS and DOES 1 through 20.

JURY TRIAL DEMANDED

23 Defendants./

24 I. INTRODUCTION

25 1. Plaintiff Elena M. Del Campo brings this action on behalf of herself
26 and all others similarly situated, and on behalf of the general public, for violations of
27 the Civil Rights Act, 42 U.S.C. § 1983 by defendant George Kennedy, acting in his
28 official capacity as Santa Clara County District Attorney, and for violations of the Fair

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2 Debt Collection Practices Act, 15 U.S.C. §§1692 *et seq.* [hereinafter "FDCPA"] and
3 the California Unfair Business Practices Act, Business and Professions Code §§
4 17200 *et seq.* [hereinafter "CUBPA"], by defendants American Corrective Counseling
5 Services, Inc.[ACCS], Don R. Mealing, Bruce D. Raye and R.D. Davis. [hereinafter,
6 defendants ACCS, Mealing, Raye and Davis are referred to collectively as "the Debt
7 Collector defendants."] ACCS collects on checks which did not clear throughout the
8 United States, including various counties in California. In California ACCS operates
9 allegedly pursuant to a "bad check diversion program" authorized by California Penal
10 Code §§ 1160.60 *et seq.* However, in operating this program, both in Santa Clara
11 County and in other California counties, ACCS imposes unlawful collection charges,
12 violates constitutional due process guarantees afforded by the California and United
13 States Constitution, and violates federal statutes created to protect people from
14 predatory collection practices. Defendant George Kennedy, acting in his official
15 capacity, by actively assisting ACCS and by delegating non-delegable duties to
16 ACCS, also violates the constitutional rights of check writers. The most effective
17 means for remedying these violations is through this class action, seeking
18 declaratory and injunctive relief, restitution and damages.

19 II. JURISDICTION

20 2. Jurisdiction of this Court arises under 28 U.S.C. §1331, 15 U.S.C.
21 §1692k(d), and supplemental jurisdiction exists for the state law claims pursuant to
22 28 U.S.C. §1367.

23 III. PARTIES

24 3. Plaintiff Elena M. Del Campo is a natural person residing in
25 Redwood City, California.

26 4. George Kennedy, sued herein in his official capacity, is the Santa
27 Clara County District Attorney and is located at 70 West Hedding Street, W Wing,
28 San Jose, California.

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2 5. Defendant American Corrective Counseling Services, Inc. ("ACCS")
3 is a corporation engaged in the business of collecting dishonored checks in this state
4 with its principal place of business located at 180 Avenida La Pata, San Clemente,
5 California. At all times relevant herein ACCS has operated under color of state law.

6 6. Defendant Don R. Mealing is or was employed as the President of
7 ACCS. At all times relevant herein Mealing has operated under color of state law.

8 7. Defendant Bruce D. Ray, which may be a fictitious name, is or was
9 employed by ACCS. At all times relevant herein Ray has operated under color of
10 state law.

11 8. Defendant Lynn R. Hasney, a/k/a R.D. Davis, is or was employed
12 ACCS as executive vice president of operations. At all times relevant herein Davis
13 has operated under color of state law.

14 9. Plaintiff is ignorant of the true names and capacities, whether
15 individual, corporate, or otherwise, or defendants sued herein as Does One through
16 Twenty. Plaintiffs will seek leave to amend this complaint when the true names and
17 capacities of said defendants are ascertained. Plaintiffs allege on information and
18 belief that each defendant herein is acting in concert with, and the agent and/or
19 employee of, each other defendant.

20 10. Plaintiffs allege on information and belief that interests of the ACCS
21 shareholders and of ACCS. have been so unified that their separate personalities no
22 longer exist and that if the acts are treated as those of the corporation alone, an
23 inequitable result will follow.

24 11. The principal purpose of the Debt Collector defendants is the
25 collection of debts using the mails and telephone. These defendants regularly collect
26 and attempt to collect debts alleged to be due another and are "debt collectors"
27 within the meaning of 15 U.S.C. § 1692a(6).
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IV. FACTUAL ALLEGATIONS

12. Defendant ACCS created and operates the Bad Check Restitution Program. Print outs of information from ACCS's website <http://www.accs-inc.com> are attached as Exhibit 1.

13. ACCS operates this program throughout California, under color of state law, including in the Counties of Santa Clara, Los Angeles, Monterey, Merced, Orange, Riverside, San Bernadino, San Diego, San Joaquin and Stanislaus

14. Defendant Don R. Mealing designed, developed, and implements the Bad Check Restitution Program utilized by ACCS.

15. Defendant George Kennedy, acting in his official capacity, has contracted with ACCS, an independent contractor, for its services in operating a Bad Check Restitution Program.

16. Plaintiff alleges on information and belief that George Kennedy approved and/or signed the contract with ACCS.

17. On or about June 11, 2001 plaintiff Elena del Campo wrote a check in the amount of \$95.02 to the Fry's Electronics Store in Palo Alto, California, [Fry's], for the purchase of goods for personal use,. This check did not clear upon presentment.

18. Ms. del Campo learned a few days later that her check had not cleared and she contacted Fry's in order to pay the check. Ms. del Campo was told by a Fry's employee that the check was not yet in the Fry's computer system, and that therefore Ms. del Campo's payment could not be accepted. She was directed to wait for a verbal or written payment request from Fry's.

19. Fry's did not contact Ms. del Campo. However, in October 2001 Ms. del Campo received a three-page document dated October 3, 2001, purportedly sent by the Santa Clara County District Attorney. The letter was entitled "**OFFICIAL NOTICE**" on letterhead of Santa Clara County District Attorney and George

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2 Kennedy, District Attorney, over the signature of "Bruce D. Raye, Criminal
3 Investigator," and concerned the unpaid check which Ms. del Campo had written to
4 Fry's. Although the letter appears to be official correspondence from the Santa Clara
5 County District Attorney, it was actually prepared and sent by ACCS, without any
6 direct supervision or participation by the Santa Clara County District Attorney. A
7 copy of this letter is attached hereto as Exhibit 2.

8 20. Although the Santa Clara County District Attorney did not
9 participate in the decision to send Exhibit 2 to Ms. del Campo, defendant George
10 Kennedy, acting in his official capacity, is aware that ACCS uses form letters such as
11 this, ostensibly sent by the district attorney.

12 21. In Exhibit 2 defendants ACCS, Mealing and Raye makes several
13 false representations, including, but not limited to, the following:

14 a. the Santa Clara County District Attorney operates and controls a
15 Bad Check Restitution program.

16 b. the letter was prepared and mailed by the Santa Clara District
17 Attorney, and is official correspondence from a criminal investigator employed by the
18 District Attorney.

19 c. communications to the toll-free phone number and address printed
20 on the letter will be received and considered by the District Attorney.

21 d. the payee of the check has made an "Incident Report" against the
22 check writer alleging a violation of Penal Code § 476a.

23 e. the check writer has committed a crime by writing a check that did
24 not clear and must enroll in a misdemeanor diversion program to avoid possible
25 criminal prosecution.

26 f. as a condition of participating in a misdemeanor diversion program
27 the check writer is lawfully obligated to pay the check amount, plus a \$35.00
28 administrative fee, a \$10.00 returned item fee and must attend and pay \$125.00 for a

1 "Financial Accountability Class."

2 22. The true facts are as follows:

- 3 a. that the Bad Check Restitution Program is operated for profit by
4 ACCS with little or no supervision by the Santa Clara County District Attorney
5 b. Exhibit 2 was prepared and sent by ACCS, not by a criminal
6 investigator employed by the Santa Clara County District Attorney;
7 c. the address and phone number on Exhibit 2 are for ACCS, not for
8 the Santa Clara County District Attorney. ACCS representatives who are contacted
9 by check writers disguise the fact that they are employees of a private collection
10 agency, and represent that they are employees of the Santa Clara County District
11 Attorney;
12 d. check payees have not made an "Incident Report" or alleged that
13 check writers have violated Penal Code § 476a;
14 e. The Santa Clara County District Attorney has initiated no criminal
15 investigation and the District Attorney does not have probable cause to believe that
16 the Penal Code § 476a has been violated;
17 f. the Santa Clara County District Attorney rarely, if ever, initiates
18 criminal prosecution for failure to comply with Exhibit 2.
19 g. the check writer is not lawfully obligated to pay all the charges
20 sought in Exhibit 2.

21 23. On or about October 17, 2001 Ms. del Campo mailed payment in
22 the amount of \$95.02 to the address provided in Exhibit 2.

23 24. In November 2001 Ms. del Campo received a second letter,
24 purportedly from the Santa Clara County District Attorney, Bad Check Restitution
25 Program, signed by "R.D. Davis, Case Coordinator." This letter is dated November
26 7, 2001 and is entitled "**NOTICE OF FAILURE TO COMPLY.**" A copy of this letter is
27 attached hereto as Exhibit 3.
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25. Although the Santa Clara County District Attorney did not participate in the decision to send Exhibit 3 to Ms. del Campo, defendant George Kennedy, acting in his official capacity, is aware that ACCS uses form letters such as this, ostensibly sent by the district attorney.

26. In Exhibit 3 defendants ACCS, Mealing and Davis makes several false representations, including, but not limited to, the following:

a. the letter was prepared and mailed by the Santa Clara District Attorney, and is official correspondence from a case coordinator employed by the District Attorney.

b. communications to the toll-free phone number and address printed on the letter will be received and considered by the District Attorney. In fact, the phone number and address are for ACCS.

c. the check writer has not responded to the initial letter she was sent.

d. a criminal action may be filed in Municipal Court if the check writer does not contact the District Attorney's case coordinator immediately.

27. The true facts are as follows:

a. Exhibit 3 was prepared and sent by ACCS, not by a case coordinator employed by the Santa Clara County District Attorney;

b. the address and phone number are for ACCS, not the Santa Clara County District Attorney. ACCS representatives who are contacted by check writers disguise the fact that they are employees of a private collection agency, rather than the Santa Clara County District Attorney;

c. the check writer has responded by making partial payment.

d. there is no probable cause to believe that Ms. del Campo violated California Penal Code § 476(a).

e. it is unlikely that the Santa Clara County District Attorney will file any action against the check writer in Municipal Court for failure to pay the check fees

1 above the face amount of the check.

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3 28. On or about December 7, 2001 Ms. del Campo received a third
4 letter, purportedly from the Santa Clara County District Attorney, Bad Check
5 Restitution Program, signed by "R.D. Davis, Case Coordinator." This letter is dated
6 December 5, 2001 and is entitled "**OFFICIAL NOTICE.**" A copy of this letter is
7 attached hereto as Exhibit 4.

8 29. Although the Santa Clara County District Attorney did not
9 participate in the decision to send Exhibit 4 to Ms. del Campo, defendant George
10 Kennedy, acting in his official capacity, is aware that ACCS uses form letters such as
11 this, ostensibly sent by the district attorney.

12 30. In Exhibit 4 defendants ACCS, Mealing and Davis makes several
13 false representations, including, but not limited to, the following:

14 a. the letter was prepared and mailed by the Santa Clara District
15 Attorney, and is official correspondence from a case coordinator employed by the
16 District Attorney.

17 b. communications to the toll-free phone number and address printed
18 on the letter will be received and considered by the District Attorney. In fact, the
19 phone number and address are for ACCS,.

20 c. Ms. del Campo is lawfully obligated to pay \$170.00 in lawful check
21 fees to the Santa Clara County District Attorney.

22 d. there is a reasonable probability that criminal prosecution
23 proceedings will be pursued if Ms. del Campo does not pay \$170.00 to the Santa
24 Clara County District Attorney.

25 31. The true facts are as follows:

26 a. Exhibit 4 was prepared and sent by ACCS, not by a case
27 coordinator employed by the Santa Clara County District Attorney;

28 b. the address and phone number are for ACCS, not the Santa Clara

1 County District Attorney. ACCS representatives who are contacted by check writers
2 disguise the fact that they are employees of a private collection agency, rather than
3 the Santa Clara County District Attorney;

4 c. there is no probable cause to believe that Ms. del Campo violated
5 California Penal Code § 476(a).

6 d. it is unlikely that the Santa Clara County District Attorney will
7 criminally prosecute the check writer for failure to pay the check fees above the face
8 amount of the check.

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10 32. On information and belief plaintiff alleges that the practices and
11 procedures used by ACCS in the Santa Clara County Bad Check Restitution
12 Program are the same, or similar to, those followed in all bad check restitution
13 programs which ACCS operates in California.

14 33. ACCS maintains all physical files, financial records,
15 documentation, reports, computer files, etc. regarding debtors in the Bad Check
16 Restitution Program.

17 34. ACCS receives a portion of all of all administration fees and
18 returned item fee, plus all program fees.

19 35. Defendant George Kennedy, acting in his official capacity, receives
20 a portion of the money collected by ACCS.

21 **V. PRACTICES AND POLICIES OF DEFENDANTS**

22 36. In association with a number of California counties ACCS operates
23 county "Bad Check Restitution Programs."

24 37. It is or was the practice and policy of ACCS to prepare and cause
25 to be sent letters containing false representations that the letter is sent by the county
26 district attorney, and to impersonate the district attorney in responding to check writer
27 and check recipient inquiries.

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38. It is or was the practice and policy of ACCS to send collection letters without providing the validation notice required by 15 U.S.C. §1692g(a).

39. It is or was the practice and policy of ACCS to send collection letters without including the debt collection warning required by 15 U.S.C. §1692e(11).

40. It is or was the practice and policy of ACCS to send collection letters without the intent or legal authority to open a criminal investigation.

41. It is or was the practice and policy of ACCS to send collection letters stating or implying that there is a probability that the check writer will be criminally prosecuted unless he or she submits to the Bad Check Restitution Program and pays all fees being demanded.

42. It is or was the practice and policy of ACCS to send collection letters misrepresenting the character, amount, or legal status of the alleged debt.

43. It is or was the practice and policy of ACCS to send collection letters with the false representation or implication that the consumer had committed a crime.

44. It is or was the practice and policy of ACCS to seek check charges that are not authorized by law.

45. It is or was the practice and policy of defendant George Kennedy, acting in his official capacity, to provide blanket authorization to ACCS to conduct the Bad Check Restitution Program in their name, without providing any meaningful supervision of, or control over, ACCS' actions.

46. It is or was the practice and policy of defendant George Kennedy to allow ACCS to collect unlawful check charges and to share in the proceeds of those collections.

47. It is or was the practice and policy of defendant George Kennedy to refer all payee inquiries concerning checks which had not cleared to ACCS,

1 without first making any investigation.

2 48. It is or was the practice and policy of defendant George Kennedy
3 to refer checks which had not cleared to the Bad Check Restitution Program without
4 first determining whether there is probable cause to believe there has been a
5 violation of Penal Code § 476a.
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7 **VI. CLASS ACTION ALLEGATIONS**

8 49. This action is brought as a class action, as follows:

9 **Umbrella class:** All persons who were sent a collection demand by
10 ACCS pursuant to California Penal Code §§ 1001.60 *et seq.* purporting to be a letter
11 from a California county district attorney.

12 **Sub-class 1-A:** [California CUBPA class]: All members of the umbrella
13 class from whom ACCS attempted to collect, or collected money, within four years of
14 the date of the filing of this Complaint.

15 **Sub-class 1-B:** [California FDCPA]: All members of the umbrella
16 class, from whom ACCS attempted to collect, or collected money for checks written
17 for personal, family, or household purposes, within one year of the date of the filing
18 of this Complaint.

19 **Sub-class 2-A:** [California 42 U.S.C. § 1983 class]: All members of
20 the umbrella class from whom ACCS attempted to collect, or collected money in the
21 name of a government entity, within four years of the date of the filing of this
22 Complaint.

23 **Sub-class 2-B:** [Santa Clara County 42 U.S.C. § 1983 class]: All
24 members of the umbrella class, from whom ACCS attempted to collect, or collected
25 money in the name of the Santa Clara County District Attorney, for checks written for
26 personal, family, or household purposes, within one year of the date of the filing of
27 this Complaint.
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2 50. Plaintiff alleges that the umbrella class, and each sub-class is so
3 numerous that joinder of all members is impractical. Based on the form nature of the
4 letters sent by defendants in the operation of the Bad Check Restitution Program,
5 plaintiff estimates that each class includes thousands of class members.

6 51. There are questions of law and fact common to the class,
7 including, but not limited to, the following:

- 8 a. whether ACCS made demands on all class members that are the
9 same or similar to the demands made in Exhibits 2, 3 and 4.
10 b. whether defendants simulate or falsely represent a document
11 authorized, issued, or approved by the official of any state;
12 c. whether ACCS' collection activities are governed by the FDCPA.
13 d. whether ACCS' collection activities are unfair, fraudulent or unlawful.
14 e. whether ACCS fails to provide the validation notice, expressly
15 required by the FDCPA
16 f. whether ACCS fails to provide the debt collection warning expressly
17 required by the FDCPA.;
18 g. whether ACCS threatens to take any action that cannot legally be
19 taken or that is not intended to be taken;
20 h. whether ACCS falsely represents the character, amount, or legal
21 status of the debt;
22 i. whether ACCS represents or implies that nonpayment of the debt will
23 result in the arrest or criminal prosecution of the check writer when such action is not
24 intended;
25 j. whether ACCS gives the false representation or implication that the
26 check writer has committed any crime, or other conduct an order to disgrace the
27 check writer;
28 k. whether ACCS collects or attempt to collect fees that are not

1 authorized by law.

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3 l. whether ACCS gives the false representation or implication that
4 documents are legal process;

5 m. whether ACCS uses any business, company, or organization name
6 other than the true name of the debt collector's business, company, or organization.

7 n. whether any defendant violates the right of a check writer to
8 substantive and procedural due process by, *inter alia*, having ACCS demand and
9 collect unlawful check fees, by allowing ACCS, a private collection agency, to falsely
10 represent that it is a district attorney's office, by delegating to ACCS, a private
11 collection agency with a financial stake in the outcome, the authority to determine
12 whether there is probable cause to believe that a crime has been committed and by
13 aiding and abetting ACCS in the unauthorized practice of law.

14 52. Plaintiff's claim is typical of the claims of the potential class
15 members. All claims of plaintiff and the class are based on the same facts and legal
16 theory.

17 53. Plaintiff Elena M. Del Campo will fairly and adequately protect the
18 interest of the class. She has retained counsel who are experienced in handling
19 class actions as well as FDCPA, CUBPA and 42 U.S.C. § 1983 claims. Neither Ms.
20 Del Campo nor her counsels have any interests that may conflict with the interests of
21 the class.

22 54. Certification of a class under Rule 23(b)(2) of the Federal Rules of
23 Civil Procedure is appropriate in that defendants have acted on grounds generally
24 applicable to the class thereby making appropriate declaratory and injunctive relief
25 with respect to the class as a whole.

26 55. Certification of the class under Rule 23(b)(3) of the Federal Rules
27 of Civil Procedure is also appropriate in that:

28 a. the questions of law and fact common to the members of the

1 classes predominate over any questions affecting an individual member.

2 b. a class action is superior to other available methods for the fair and
3 efficient adjudication of the controversy.

4 56. Plaintiff requests certification of a class pursuant to Rule 23(b)(2),
5 or, in the alternative, a hybrid class combining the elements of Rule 23(b)(3) for
6 monetary damages and Rule 23(b)(2) for declaratory and equitable relief, including
7 injunctive relief and restitution.

8
9 **VII. FIRST CLAIM FOR RELIEF**
10 **(Civil Rights Act, 42 U.S.C. § 1983)**

11 57. Plaintiff incorporates by reference all previous paragraphs as
12 though set forth herein.

13 58. The Debt Collector defendants, and each of them, acting under
14 color of state law, violated the Due Process Clause of the Fourteenth Amendment to
15 the United States Constitution by the collection practices described herein, including
16 having ACCS and its employees to impersonate California county district attorneys,
17 by failing to provide check writers an opportunity to be heard regarding the imposition
18 of any fine, fee, or charge regarding a dishonored check, by having ACCS demand
19 and collect unlawful check fees and by delegating to ACCS, a private collection
20 agency with a financial stake in the outcome, the unreviewable authority to determine
21 whether there is probable cause to believe that a crime has been committed.

22 59. Defendant Kennedy, acting in his official capacity, violated the Due
23 Process Clause of the Fourteenth Amendment to the United States Constitution by
24 authorizing the Debt Collector defendants to engage in the collection practices
25 described herein

26 WHEREFORE, relief is requested as set forth below.

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VIII. SECOND CLAIM FOR RELIEF
(California Constitution, Article I, Sec. 7)

60. Plaintiff incorporates by reference all previous paragraphs as though set forth herein.

61. California Constitution, Article I, Section 7 provides, in pertinent part:

A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. . . .

62. Defendants, and each of them, acting under color of state law, violated the Due Process Clause of the California Constitution by the collection practices described herein, including allowing ACCS and its employees to impersonate California county district attorneys, by failing to provide check writers an opportunity to be heard regarding the imposition of any fine, fee, or charge regarding a dishonored check, by allowing ACCS to demand and collect unlawful check fees and by delegating to ACCS, a private collection agency with a financial stake in the outcome, the unreviewable authority to determine whether there is probable cause to believe that a crime has been committed.

WHEREFORE, relief is requested as set forth below.

IX. THIRD CLAIM FOR RELIEF
(Fair Debt Collection Practices Act)

63. Plaintiff incorporates by reference all previous paragraphs as though set forth herein.

64. The Debt Collector defendants' violations of the FDCPA include, but are not limited to, the following:

a. The initial letter of ACCS to Ms. Del Campo, Exhibit 2, did not contain the validation notice required by 15 U.S.C. §1692g(a), nor was the validation notice provided to her within five days of the initial communication.

b. Neither the initial letter to Ms. del Campo, Exhibit 2, nor the follow

1 up letter, Exhibit 3, contain the debt collection warning required by 15 U.S.C.
2 §1692e(11).

3 c. Exhibit 2 and Exhibit 3 contain false, deceptive and misleading
4 implications or representations concerning the ACCS' affiliation with criminal justice
5 powers of the Santa Clara County District Attorney's office, in violation of 15 U.S.C.
6 §1692(e)(1).

7 d. In Exhibit 2 ACCS violates 15 U.S.C. §1692(e)(2)(A) by
8 misrepresenting the character, amount, and legal status of the debt;

9 e. In Exhibit 2 and Exhibit 3 ACCS violates 15 U.S.C. §1692(e)(4) by
10 using the Santa Clara County District Attorney's name and letterhead combined with
11 repeated references to violations of the law give the false impression that civil
12 collection matters are criminally enforceable which an unsophisticated consumer
13 could reasonably infer include arrest and imprisonment;

14 f. In Exhibit 2 and Exhibit 3 the Debt Collector defendants violate 15
15 U.S.C. §1692(e)(5) by threatening action that was not intended to be taken or could
16 not legally be taken;

17 g. In Exhibits 2, 3 and 4 the Debt Collector defendants violate 15
18 U.S.C. §1692(e)(7) by representing or implying that the check writer has committed a
19 crime;

20 h. In Exhibits 2, 3 and 4 the Debt Collector defendants violate 15
21 U.S.C. §1692(e)(9) in that the overall appearance of the defendant's communications
22 which gives the impression it is a communication from the Santa Clara County
23 District Attorney's office.

24 i. In Exhibits 2, 3 and 4 the Debt Collector defendants violate 15
25 U.S.C. §1692(e)(14) by using a name other than their own, *i.e.* -- the Santa Clara
26 County District Attorney; and

27 j. In Exhibits 2, 3 and 4 the Debt Collector defendants violate 15
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1 U.S.C. §§ 1692(f) and 1692(f)(1) by requesting amounts which are not authorized by
2 contract or by California law.

3 WHEREFORE, relief is requested as set forth below.

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5 **X. FOURTH CLAIM FOR RELIEF**
6 **(Cal. Bus. & Prof. Code §§ 17200 et seq.)**

7 65. Plaintiff incorporates by reference all previous paragraphs as
8 though set forth herein.

9 66. The California Unfair Business Practices Act, [CUBPA], Cal.
10 Business & Professions Code §§17200, *et seq.*, prohibits unlawful, unfair or
11 fraudulent business acts or practices. The CUBPA provides that a Court may order
12 injunctive relief and restitution to affected members of the general public as remedies
13 for any violations of the CUBPA.

14 67. The Debt Collector defendants have committed unlawful, unfair or
15 fraudulent acts or practices in sending the demand letters, making the demands and
16 collecting check fees, and engaging in the unauthorized practice of law, as described
17 herein, in violation of the Cal. Bus. & Prof. Code §17200 *et seq.*

18 68. The acts and practices complained of herein constitute unfair
19 business practices because these acts and practices are patently unfair and
20 substantially injurious to the general public and offensive to established California
21 public policy.

22 69. The acts and practices complained of herein constitute unfair
23 business practices because these acts and practices are likely to deceive the
24 general public as to their legal rights and obligations with respect to the collection of
25 their alleged debts.

26 70. The acts and practices complained of herein constitute unfair
27 business practices because these acts and practices are unlawful under federal law.

28 71. Plaintiff is entitled under the CUBPA to enjoin these acts and

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practices and to obtain disgorgement of all profits and restitution of all funds obtained by the Debt Collector defendants by reason of and through the use of these unlawful, unfair and fraudulent acts and practices. Pursuant to the CUBPA plaintiffs, individually and on behalf of all members of the general public who are, have been or may be, subjected to these unlawful, unfair, and fraudulent business acts and practices of defendants hereby request preliminary and permanent injunctive relief prohibiting such practices in the future, and other orders as may be necessary to restore to any person in interest, any money or property, real or personal, which may have been acquired by defendants by means of such unlawful, unfair and fraudulent business practices, or to disgorge profits defendants have earned thereby.

72. In addition, pursuant to Cal. Code of Civil Procedure §1021.5, plaintiffs are entitled to recover reasonable attorneys' fees, costs and expenses incurred in bringing this action.

WHEREFORE, relief is requested as set forth below.

DEMAND FOR TRIAL BY JURY

Plaintiff demands trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure of all issues triable of right by a jury.

PRAYER FOR RELIEF

WHEREFORE, Elena M. Del Campo requests that judgment be entered for herself and the class against defendant George Kennedy and American Corrective Counseling Services, Inc., Don R. Mealing, Bruce D. Raye, and Lynn R. Hansey for:

- 1. Declaratory relief that ACCS's collection practices described herein violate the Civil Rights Act, the FDCPA, and the CUBPA;

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2. Declaratory relief and a preliminary and permanent injunction prohibiting that the following conduct is unlawful and is prohibited:

- a. referring checks which did not clear to ACCS without first making an independent finding that there is probable cause to believe that the check writer violated Penal Code § 476a in writing the check.
- b. providing reasonable access to a government employee directly supervised by the district attorney's office to respond to communications concerning referral to the "Bad Check Diversion Program."

3. A preliminary and permanent injunction prohibiting the Debt Collector defendants, their officers, employees, agents and all those acting in concert with them from, inter alia, the following collection activities:

- a. communicating with check writers without disclosing in each communication that they are debt collectors, not a district attorney's office.
 - b. seeking to collect, or collecting, any unlawful check charges, including, but not limited to, program fees and returned check fees that are not remitted to the payee.
 - c. making false representations in their communications with check writers.
4. Actual damages.
5. Restitution and disgorgement
6. Statutory damages pursuant to 15 U.S.C. §1692k;

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7. Costs and reasonable attorneys' fees pursuant to 42 U.S.C. §1988,
15 U.S.C. §1692k, and Cal. Code of Civil Procedure § 1021.5.

8. Such other and further relief as the Court deems proper.

DATED: December 10, 2001



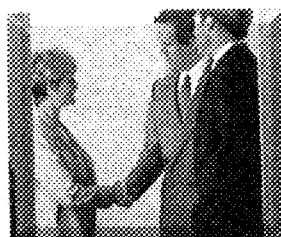
Paul Arons, State Bar #84970
LAW OFFICES OF PAUL ARONS
1616 West Street
Redding, CA 96001
(530) 244-5870

O. Randolph Bragg
HORWITZ, HORWITZ & ASSOC.
25 East Washington Street
Suite 900
Chicago, IL 60602
(312) 372-8822
(312) 372-1673 (FAX)

ATTORNEYS FOR PLAINTIFF

Bad Check Program Overview

The ACCS Bad Check Restitution Program deals with misdemeanor bad checks according to local statute. First time offenders are given an opportunity to comply with program terms and avoid prosecution on pre-trial diversion basis without a court appearance under the prosecutors prosecutorial discretion. No criminal record is created; only the prosecutor's office maintains a record of the incident.



ACCS
*Bad Check
Restitution Programs
include...*

- Coordination of all diversion program case information for the Prosecutor's office and law enforcement.
- Counseling/Educational classes for offenders.
- Offender notification & compliance tracking.
- Recovery and disbursement of victim restitution.

Engineering or Re-engineering your program... *No Problem!*

We are specialist at developing programs that will work for your jurisdiction, under your State's laws. ACCS also "re-engineers" existing programs for maximum efficiency that have been internally developed and operated by a Prosecutor's office. We take care of the details freeing your staff to concentrate on more serious cases.

- Educational intervention classes for offenders.
- Highly automated victim restitution management.
- Monitoring Systems for offender compliance.
- Ongoing public relations campaigns.
- Comprehensive reporting of all programs.

[Next](#)

[Back](#)





Santa Clara County District Attorney
Bad Check Restitution Program
1765 Landess Ave PMB 150
Milpitas CA 95035-7019

George Kennedy
District Attorney

OFFICIAL NOTICE

ELENA M DEL CAMPO
PO BOX 292
REDWOOD CITY CA 94064-5292

Date of Notice: 10/03/01
Case #: SCC 102496-05

PLEASE READ THIS NOTICE CAREFULLY. The Santa Clara County District Attorney's Office has received an INCIDENT REPORT alleging you have violated Penal Code 476(a) of the California State Statute: Passing a Worthless Check. A conviction under this statute is punishable by up to six (6) months in county jail and up to \$1,000 in fines. See PART 2 of the information pages attached to this Notice about the party(s) filing this crime report.

YOU MAY AVOID A COURT APPEARANCE if you agree to enroll in the Santa Clara County District Attorney's Bad Check Restitution Program. California Penal Code Sections 1001.60-1001.69 authorize District Attorneys to make this offer to individuals that comply with the following Program requirements:

1. Complete the Santa Clara County District Attorney's mandatory one-day educational class on Financial Accountability.
2. Pay FULL restitution for all reported checks, PLUS all applicable administrative, returned item, and program fees.

Program enrollment is OPTIONAL. You may wish to consult an attorney to obtain legal advice about your rights in regards to this matter. The District Attorney is extending an opportunity to participate in a pre-trial misdemeanor diversion program as an alternative to appearing in court. The District Attorney does not require you to enter any form of plea in exchange for Program participation, and participation is NOT an admission of guilt.

The Bad Check Restitution Program is designed to bring a fast resolution to this matter. Program completion requires payment of the appropriate restitution and fees and attendance in a one-day class, typically 8:00am - 4:30pm on a Saturday. If you successfully comply, you will receive a notice of completion from the District Attorney and THERE WILL BE NO CRIMINAL, POLICE, OR COURT RECORD OF THIS MATTER!

WARNING - Completion of the Bad Check Restitution Program is valid ONLY if you comply with ALL District Attorney requirements. Failure to comply with payment of restitution and fees, or class attendance may subject you to criminal court proceedings.

For Program enrollment and payment information, please review PART 1 of the next page. If you believe you received this Notice in error, please read PART 3 of the instructions before calling this office.

Signed,

Bruce D. Rave
Bruce D. Rave
Criminal Investigator
Santa Clara County District Attorney's Office



PART 2 - INCIDENT REPORT INFORMATION

VICTIM	CASE #	CHECK #	CHECK AMOUNT	RETURNED ITEM FEE	ADMIN FEE	TOTAL THIS CHECK
PPYS ELECTRONICS #03	192496	1610	\$25.02	\$10.00	\$35.00	\$140.02

PROGRAM FEE: \$125.00
TOTAL BALANCE DUE: \$265.02

NOTE: You may deduct \$25.00 from the Program Fee if your FULL PAYMENT is POSTMARKED by: November 3, 2001.

Do not attempt to contact the business or party who filed the Report.
THIS CASE MUST NOW BE RESOLVED THROUGH THIS OFFICE!

PART 3 - IMPORTANT INFORMATION Please Read Carefully

● **IF YOU BELIEVE YOU RECEIVED THIS NOTICE IN ERROR**

- STEP 1 - Review your records CAREFULLY.
- STEP 2 - Call the District Attorney's Bad Check Restitution Program Office at (800) 931-9720.
- STEP 3 - Ask for a Case Coordinator, explain the error.
- STEP 4 - The Case Coordinator will ask you to mail in documentation of the error. If you did not write the check(s), you will be asked to go to your bank to obtain and sign an affidavit that you did not write the check(s) in question. In most cases, you will also be required to file a police report if you believe the check(s) were stolen or forged. With cases involving stop payments on checks, or performance disputes, please consult a Case Coordinator for more information.
- STEP 5 - Mail in your case documentation to the:

**Santa Clara County District Attorney
 Bad Check Restitution Program
 1765 Landess Ave. PMB 150
 Milpitas, CA 95035-7019**

Note: Personal bankruptcies DO NOT void responsibility in a criminal matter. Contact our office for details, or consult an attorney

● **IF YOU BELIEVE YOU WERE NOT PROPERLY NOTIFIED**

The District Attorney's Office accepts ONLY bad check incident reports from those businesses, or parties that have DOCUMENTED attempts to notify you according to California State law. In addition to notification from the party you issued the check to, banks routinely send customers notice of returned items. Non-sufficient funds checks also appear on your monthly account statement. **CHECK YOUR RECORDS CAREFULLY BEFORE CONTACTING THIS OFFICE.**

● **IF YOU HAVE ALREADY PAID THE MERCHANT, OR FILING PARTY**

Please mail documentation that the merchant or filing party received payment BEFORE the date of this Notice. Allow the Office fourteen (14) days to process your information before calling. Our Office will determine the appropriate course of action and contact you by phone and/or letter.

● **IF YOU WANT TO APPEAR IN COURT**

If you want to contest this action and appear in court, you may want to consult an attorney. Contact this office and inform us of your decision. The District Attorney's Office or Court will send additional information and instructions on how to prepare for a Court appearance

FOR ADDITIONAL INFORMATION CALL (800) 931-9720

REV. 05/21/99 0017

Page 2

PART 1 - PROGRAM ENROLLMENT

IF YOU WISH TO ENROLL IN THE DISTRICT ATTORNEY'S BAD CHECK RESTITUTION PROGRAM, COMPLETE THE ENROLLMENT FORM BELOW:

ENROLLMENT FORM

Case #: SCC 102496-00

(Please Return This Page With Your Payment)

Name: ELENA M DEL CAMPO

TOTAL BALANCE DUE: \$285.02

Address: _____

Phone: _____

DL#: _____

City/State/Zip _____

SS#: _____

Is this a new address?

Select Payment Option Below:

I wish to PAY IN FULL by November 3, 2001 and deduct \$25.00 from the Program Fee. I have deducted \$25.00 from the TOTAL BALANCE DUE and I am enclosing \$240.02.

I am requesting an automatic payment extension. I am enclosing \$132.51 which is 1/2 of the total balance and the remaining balance of \$132.51 will be paid by December 2, 2001.

ALL PAYMENTS MUST BE POSTMARKED BY THE DATES INDICATED! For additional information regarding payments, please call (800) 931-9720.

Make payments payable to:

Santa Clara County District Attorney
1765 Landess Ave. PMB 150
Milpitas, CA 95035-7019
(This is not a walk-in office)

**NOTE: Mail payments by MONEY ORDER, or CASHIER'S CHECK ONLY!
NO PERSONAL CHECKS ACCEPTED!**

FINANCIAL ACCOUNTABILITY CLASS SCHEDULE INFORMATION

Please indicate which Class you wish to attend by placing the #1 in front of the class date. Please choose an alternate date by placing #2 in front of that date in case your first choice is not available as classes are subject to availability. Classes are scheduled on a first come first serve basis.

_____ Saturday November 17, 2001 8:00 am - 4:30 pm. _____ Saturday December 1, 2001 8:00 am - 4:30 pm

OUR OFFICE WILL MAIL CONFIRMATION OF YOUR CLASS, ALONG WITH DIRECTIONS TO THE CLASS LOCATION. Please bring your confirmation letter, a pen or pencil, and picture identification for admittance to the class. Should you not receive confirmation of your requested class by ten (10) working days prior to class, please call (800) 931-9720.

Special Note. If you have a medical condition that may prevent your attendance in class, please mail in a note from your physician stating your condition and treatment prognosis BEFORE your payment deadline.

By my signature I hereby enroll in the Bad Check Restitution Program and agree to all terms and conditions

SCC 102496 100301

ELENA M DEL CAMPO

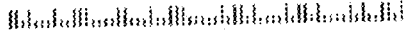


See 2/3 May 0017

Santa Clara County District Attorney
Bad Check Restitution Program
1765 Landess Ave PMB 150
Milpitas CA 95035-7019

George Kennedy
District Attorney

OFFICIAL NOTICE

===== 
ELENA M DEL CAMPO
PO BOX 292
REDWOOD CITY CA 94064-0292

Date of Notice: 12/05/01

Case #: SCC 102495-15

Please contact this office prior to 12/19/01 regarding incident reports involving California Penal Code Section 476(a), "Passing a Worthless Check". Prior attempts to resolve this situation have been unsuccessful.

Failure to contact this office may now result in criminal prosecution proceedings being pursued. The amount below reflects the total balance to discharge your incident report as of the date of this letter.

CASE BALANCE: \$170.00

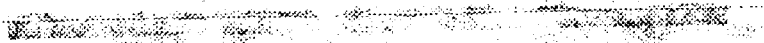
If you wish to prevent any further action against you by this office, call (800) 931-9720 during the hours listed below. After hours, please leave a message on how we may contact you regarding the disposition of your case.

PAYMENTS ACCEPTED BY MONEY ORDER OR CASHIER'S CHECK ONLY!

Office hours: Monday - Friday 8:00 am - 6:00 pm.

Thank you for your immediate response to this letter!

Sincerely,


R. D. Davis
Case Coordinator

Document 116

