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**REQUEST FOR PUBLICATION**

**JURISDICTION EXPIRES:** 11/22/2024

November 7, 2024

Hon. Mark W. Snauffer, Associate Justice  
Hon. Rosendo Peña, Jr., Acting Presiding Justice  
Hon. M. Bruce Smith, Associate Justice  
California Court of Appeal  
Fifth Appellate District  
2424 Cesar Chavez Blvd  
Fresno, CA 93721

**RE: *LVNV Funding, LLC v. Rodriguez*, No. F086904 (filed Oct. 23, 2024)**

Dear Justices Snauffer, Peña, and Smith:

The UC Berkeley Center for Consumer Law and Economic Justice and Public Counsel write to respectfully request that this Court certify its opinion in *LVNV Funding, LLC v. Rodriguez*, No. F086904 (filed Oct. 23, 2024), for publication. The opinion provides a thoughtful clarification of a key component of debt collection jurisprudence and therefore “should be certified for publication in the Official Reports.” (Cal. Rules of Court, rule 8.1105(c).)

Debt collection efforts are too often aimed at people who do not owe money at all because of mistaken identity, mistaken facts, or simply sloppy record keeping. Yet debt collectors are too rarely held accountable often for the consequences of their misconduct in initiating false collection attempts or lawsuits. *Rodriguez* makes it clear that a person mistakenly identified and targeted by a debt collection attempt may bring a federal Fair Debt Collection Practices Act and state Rosenthal Fair Debt Collection Practices Act claim against the debt collector, and that the claim cannot be avoided by the collector’s anti-SLAPP motion.

As far as the undersigned organizations are aware, no published opinion by a California appellate court has so held. Publication of this Court’s opinion in *Rodriguez* is therefore very much in order.

## **I. STATEMENTS OF INTEREST.**

The Center for Consumer Law and Economic Justice is a research center housed at the University of California, Berkeley, School of Law. The Center works to enhance the study and practice of consumer law and provides research and analysis to fuel meaningful policy change at the state and federal levels. Because unlawful debt collection significantly harms consumers, the Center recognizes the need for published appellate opinions that clearly articulate the protections provided by California law.

Public Counsel is a nonprofit public interest law firm dedicated to advancing civil rights and racial and economic justice, as well as to amplifying the power of its clients through comprehensive legal advocacy. Public Counsel's Consumer Rights & Economic Justice (CREJ) Project is one of the oldest projects within Public Counsel. Public Counsel's mission is to advance racial and economic justice by providing legal counsel for, and advocacy on behalf of, low-income individuals and their families to advance their rights, address the inequalities in bargaining power embedded in our legal system, and oppose those who take advantage of its client communities. Public Counsel regularly represents clients in debt collection lawsuits and brings claims against debt collectors and debt buyers for violations of the FDCPA and Rosenthal Act.

## **II. THE OPINION SHOULD BE PUBLISHED BECAUSE IT MEETS THE STANDARDS SET FORTH IN THE CALIFORNIA RULES OF COURT.**

California Rules of Court, rule 8.1105(c) specifies that if an opinion meets any one of the nine standards listed in the rule, that opinion "should" be certified for publication. The opinion in *Rodriguez* satisfies at least three of those standards.

### **A. The Opinion Explains An Existing Rule Of Law And Advances A New Clarification Of The Rosenthal Act. (Rule 8.1105(c)(3), (4))**

The *Rodriguez* opinion cogently explicates and clarifies key principles of California debt collection law. As a threshold matter, the opinion explains the parallel analysis in which courts should engage when interpreting the Rosenthal Act and the federal FDCPA. It goes on to provide clear, detailed guidance on how courts should examine the potential liability of debt collectors who bring suit against the wrong person.

First, *Rodriguez* explains that the Rosenthal Act largely mirrors the FDCPA. (Slip op. at p. 2, fn. 1.) Although the analysis first appears in a footnote before being reiterated in the body of the opinion (*ibid.*; *id.* at p. 5), it provides a useful explanation and reminder – from a California state appellate court rather than a federal district court – of the incorporation of the federal FDCPA into the Rosenthal Act. (See Civ. Code, § 1788.17). Noting that “the analysis of the Rosenthal Act claim mirrors that of the FDCPA claim” (slip op at p. 2, fn 1), and that “[b]oth the FDCPA and its state counterpart, the Rosenthal Act, are strict liability statutes” (*id.* at p. 5), the opinion helpfully applies the mirroring principle to establish that the Rosenthal Act attaches presumptive liability to attempts to collect a debt from the “wrong person.” (*Id.* at p. 2.)

Second, the *Rodriguez* opinion clarifies in detail how the FDCPA’s (and Rosenthal Act’s) prohibition on misrepresenting the “character” and “amount” of a debt should be applied. (*Id.* at pp. 2-5.) The decision explains that attempts to collect debt in a case of mistaken identity give rise to a cause of action under the FDCPA, and, by extension, the Rosenthal Act. (*Id.* at p. 6.)

Finally and perhaps most importantly, the *Rodriguez* decision clarifies that filing a debt collection suit against a non-debtor constitutes an unfair and misleading debt collection activity. (*Id.* at pp. 8-11.) The opinion explains that a debt collector cannot argue as a defense that the “least sophisticated” non-debtor would not have been misled by a debt collection lawsuit. (*Id.* at pp. 9-10.) As this Court trenchantly observed, “It is hard to imagine a more unfair and misleading debt collection activity than actually suing an innocent person who happens to share the same name as another debtor.” (*Id.* at pp. 10-11.) The Court continued:

It is not only the least sophisticated consumer that would reasonably understand from being served with a lawsuit that she is being accused of owing the debt at issue in the complaint: every reasonable attorney and jurist would understand that as well. That is the meaning and effect of serving a summons and complaint on someone bearing the name of the defendant in the case. The served defendant must now appear and defend the matter, or risk a default judgment being asserted against them. It would be unreasonable to suggest a consumer in such circumstances could simply ignore a court summons.

(*Id.* at p. 10.) That is a powerful, clear and eloquent expression not only of the operation of the FDCPA and Rosenthal Act in cases where a debt collector has sued the wrong person, but also of the underlying purpose of both laws.

And if there were any doubt that such a statement is needed — and needed in a published opinion — that doubt is erased by this case: LVNV is a sophisticated and experienced litigant that “files tens of thousands of debt collection lawsuits every year.” (*Ramos v. LVNV Funding, LLC* (E.D. Pa. May. 3, 2019, No. 18-5496) 2019 WL 1994463). Yet despite dozens of federal district court rulings to the contrary, it made the argument that mistaken identity cannot be the basis for an FDCPA claim – and succeeded in the district court.

The need for a definitive, citable statement of the law by a California appellate court is clear.

### **B. The Opinion Makes A Significant Contribution To The Legal Literature On Debt Collection Laws. (Rule 8.1105(c)(7))**

The opinion also compellingly explains “the progressive development of the law” (*People v. Garcia* (5th Dist., 2002) 97 Cal.App.4th 847, 850) with respect to the Rosenthal Act and the federal FDCPA, and thereby contributes meaningfully to the legal literature. (Cal. Rules of Court, rule 8.1105(c)(7).)

As noted above, Section B of the Discussion lucidly lays out the development of the FDCPA and its state counterpart, the Rosenthal Act. (Slip op. at pp. 5-8.) The opinion details the cases holding that the FDCPA allows suit against attempts to collect debt based on a case of mistaken identity. (*Id.* at pp. 6-7.) It also cites and discusses the few cases holding the opposite. (*Id.* at p. 11.) The opinion scrupulously notes the potential existence of a “bona fide error” defense. (*Id.* at p. 8.) In other words, the opinion is a careful, thorough and valuable examination of the development and operation of a key aspect of the federal and state fair debt collection practices laws. As such, it merits publication. (Cal. Rules of Court, rule 8.1105(c)(7).)

### **III. CONCLUSION.**

This Court’s opinion in *Rodriguez v. LVNV Funding, LLC* should be certified for publication because it serves at least three of the purposes outlined in California Rule of Court 8.1105(c). It applies the law to explain more than one

important rule of law, clarifies a statute, and makes a significant contribution to the legal literature. (Cal. Rules of Court, rule 8.1105(c)(3), (4), (7).)

This opinion, if published, will add significantly to the development of the law on unfair debt collection activity. We therefore respectfully request that this Court order the opinion certified for publication.

Respectfully submitted,



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