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12 Attorneys for Plaintiffs and the Class

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 WESTERN DIVISION

16 ANTHONY MAGNONE and  
RANDAL KINNUNEN,  
17 Individually and on Behalf of All  
Others Similarly Situated,  
18  
19 Plaintiffs,

20 v.

21 ACCRETIVE LLC; AGORA FUND  
I GP, LLC; AXIANT, LLC; MANN  
BRACKEN, LLP; NATIONAL  
22 ARBITRATION FORUM, INC.;  
NATIONAL ARBITRATION  
23 FORUM, LLC; DISPUTE  
MANAGEMENT SERVICES, LLC  
24 d/b/a FORT THRIGHT SOLUTIONS;  
DOES 1-10, inclusive;

25 Defendants.  
26

CASE NO. **09V09-6375** (GWx) **GAF**

**CLASS ACTION COMPLAINT**  
FOR:

- (1) VIOLATION OF CONSUMER LEGAL REMEDIES ACT;
- (2) BREACH OF CONTRACT;
- (3) VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT;
- (4) VIOLATION OF ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT;
- (5) VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500 *et seq.*;
- (6) VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 *et seq.*

DEMAND FOR JURY TRIAL

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1 Plaintiffs Anthony Magnone and Randal Kinnunen, on behalf of themselves  
2 and all others similarly situated, allege the following against Accretive LLC, Agora  
3 Fund I GP, LLC, Axiant, LLC, Mann Bracken, LLP, National Arbitration Forum,  
4 Inc., National Arbitration Forum, LLC, and Forthright Solutions (collectively  
5 “Defendants”), upon personal knowledge as to their own actions and status, and  
6 upon information and belief as to all other matters.<sup>1</sup>

### 7 INTRODUCTION

8 1. Most consumer credit card agreements contain mandatory arbitration  
9 clauses, which require consumers to forfeit their rights to litigate their disputes in  
10 court and mandate that any disputes be resolved through an alternative system of  
11 binding arbitration. Many of these agreements require disputes to be resolved  
12 exclusively through Defendant National Arbitration Forum (“NAF”).<sup>2</sup> For years,  
13 NAF falsely held itself out as an independent provider of neutral arbitration  
14 services in consumer debt matters, unaffiliated with any persons or entities within  
15 or outside the collections industry. Now, NAF is under siege by local and state  
16 prosecutors for working alongside creditors, rubber-stamping illegitimate  
17 arbitration awards against consumers, deceiving the courts and the public, and  
18 undermining the integrity of the arbitration system.

19 2. Defendant Mann Bracken LLP (“Mann Bracken”) claims to be a law  
20 firm specializing in consumer debt collection matters, but it is a debt collector in its  
21 own right. Mann Bracken initiated thousands of so-called “arbitrations” through  
22 NAF. Most of these arbitrations were against consumers from whom Mann  
23 Bracken attempted to collect alleged credit card debts on behalf of its corporate  
24 clients, *e.g.*, major credit card companies. As a self-proclaimed “independent and

25 <sup>1</sup> Mr. Kinnunen asserts claims against all Defendants. Mr. Magnone asserts claims  
26 against all Defendants except Mann Bracken, LLP.

27 <sup>2</sup> “NAF” refers collectively to defendants National Arbitration Forum, Inc. (“NAF  
28 Inc.”), National Arbitration Forum, LLC (“NAF LLC”), and Dispute Management  
Services, LLC, d/b/a Forthright Solutions (“Forthright”).

1 impartial arbitration provider,” NAF was supposed to provide arbitration services  
2 devoid of conflicts of interest.

3         3. In reality, NAF and Mann Bracken worked in tandem for the  
4 collections industry, their interests strictly aligned with credit card companies  
5 against consumers by virtue of their common owner, Defendant Accretive, LLC  
6 (“Accretive”). Accretive owns and controls both NAF and Mann Bracken, and  
7 their related entities. NAF was thus far from an “independent and impartial  
8 arbitration provider,” and instead, was a sham operation whose primary purpose  
9 was to rubber-stamp arbitration awards and confer the appearance of legitimacy  
10 upon Mann Bracken’s debt collection efforts. NAF concealed its conflict of  
11 interest and provided bogus arbitration services instead of the legitimate dispute  
12 resolution services it promised and was contractually obligated to deliver to  
13 consumers.

14         4. The Attorney General of Minnesota recently exposed the concealed  
15 relationship between NAF and Mann Bracken, and the financial relationship with  
16 their common owner, a group of New York hedge funds known as Accretive LLC.  
17 According to the Attorney General’s complaint, NAF “is financially affiliated with  
18 a New York hedge fund group that owns one of the country’s major debt collection  
19 enterprises,” which relationship NAF and Mann Bracken conceal from consumers.<sup>3</sup>  
20 Within days, NAF was forced to announce it was getting out of the consumer  
21 arbitration business.

22         5. The People of the State of California also sued NAF in a consumer  
23 fraud action brought by the City Attorney for the City of San Francisco.  
24 According to the City Attorney’s complaint, based on NAF’s own statistics from  
25 2003 to 2007, “in each and every case where a business entity brought a claim  
26 against a consumer and the matter was disposed of by hearing, the NAF arbitrator

27 <sup>3</sup> Comp. ¶ 2, *State v. Nat’l Arbitration Forum, Inc.*, (Minn. Dist. Ct. filed July 14,  
28 2009).

1 ruled in favor of the business entity – a 100% success rate.” Comp. ¶22, State v.  
2 NAF, Case No. 08-473569 (Cal. Super. Ct., filed August 22, 2008). As alleged,  
3 NAF maintained its near perfect success rate for businesses by engaging in  
4 improper, deceptive and corrupt acts, including by:

5 (a) establishing incentives for arbitrators to favor debt collectors  
6 over consumers;

7 (b) disregarding consumers’ evidence and/or arguments;

8 (c) overlooking and violating its own Code of Procedure to benefit  
9 debt collectors, and ultimately, large creditors;

10 (d) disregarding creditors lack of evidence; and

11 (e) failing to provide the bona fide arbitration services it promised  
12 to consumers.

13 6. NAF and Mann Bracken worked hand-in-hand to create the illusion of  
14 legitimacy and due process, with the purpose of railroading consumers into a  
15 corrupt dispute resolution process and bilking consumers out of hundreds or  
16 thousands of dollars, including NAF charges and Mann Bracken’s alleged legal  
17 fees and costs. Despite revelation of their ruse, neither NAF, Mann Bracken, or  
18 any of the other Defendants, including Accretive, has returned the money  
19 consumers paid for the “arbitration” services they never received.

20 7. To commence debt collection, Mann Bracken submitted its claim to  
21 NAF and then mailed a “Notice of Arbitration,” using a standardized form  
22 provided by NAF. The Notice falsely claimed that (a) NAF “is an independent  
23 and impartial arbitration organization, which does not give legal advice or  
24 represent parties”; and (b) “Parties have a full and equal right to present relevant  
25 and reliable direct and cross examination testimony, documents, exhibits, evidence  
26 and arguments.” The Notice also provided that: “IF YOU DO NOT . . . FILE  
27 WITH THE FORUM A WRITTEN RESPONSE, AN ARBITRATION AWARD  
28 MAY BE ENTERED AGAINST YOU [AND] AN ARBITRATION AWARD

1 MAY BE ENFORCED IN COURT AS A CIVIL JUDGMENT.” (all-caps in  
2 original).

3 8. The Notice of Arbitration also directed consumers to NAF’s Code of  
4 Procedure (the “NAF Code”) for information on filing a response. The NAF Code  
5 required, among other things, that the consumer’s response “shall include” any  
6 “fees as provided in the Fee Schedule.” In addition to other fees and costs that  
7 were later tacked on to bogus arbitration awards (described below), the NAF Code  
8 required consumers to make a \$50.00 initial payment on the NAF “administration  
9 fee,” in order to file a response to the Notice of Arbitration and avoid defaulting in  
10 the arbitration proceedings. Consumers paid such consideration to NAF for  
11 “independent and impartial arbitration” services, but did not receive the services  
12 for which they bargained. NAF and Mann Bracken knew, at the onset of  
13 arbitration, that regardless of whether consumers actively participated in the  
14 arbitration proceedings or defaulted, consumers would be deprived of due process  
15 and would not receive legitimate dispute resolution services, and that NAF would  
16 issue an award against the consumer, in favor of Mann Bracken’s client.

17 9. After a Notice of Arbitration was mailed to a consumer, a form letter  
18 on NAF’s letterhead was generated with an “Award” in favor of the debt collector  
19 claimant and against the respondent consumer, and rubber-stamped by an NAF  
20 arbitrator. Although the award amounts and respondent names differed, the basic  
21 template remained the same, including the following rote “findings” and  
22 “conclusions,” among others: (a) “The Arbitrator has reviewed all evidence  
23 submitted in this case;” (b) “The Arbitrator knows of no conflict of interests that  
24 exist;” (c) “The evidence submitted supports the issuance of this Award;” and (d)  
25 “The applicable substantive law supports the issuance of the Award.”

26 10. The “Award in favor of the Claimant” was invariably for hundreds or  
27 thousands more than the debt owed. Plaintiffs believe the sizeable gap between the  
28 amount of the alleged underlying debt and the amount awarded can be traced to the

1 improper inclusion of Mann Bracken's legal fees and NAF-related costs. In the  
2 end, consumers paid illegitimate fees and costs, including a \$50.00 initial payment  
3 on the NAF administration fee and exorbitant legal fees and costs -- for services  
4 never rendered and for the futile exercise of having their debt disputes "decided"  
5 by the very party opposing them.

6       11. Defendants' conduct is particularly egregious because it compromises  
7 the legitimacy of our judicial system. Courts depend heavily upon the perceived  
8 integrity and efficiency of private arbitration. Indeed, California and other states  
9 fostered the growth of the arbitration industry by streamlining the process of  
10 converting arbitration awards into judgments, as evidenced in Defendants' Notice  
11 of Arbitration: "AN ARBITRATION AWARD MAY BE ENFORCED IN  
12 COURT AS A CIVIL JUDGMENT." Defendants exploited this public interest  
13 opportunity by perverting private arbitration into an unregulated trough for  
14 themselves and the collections industry. Creditors who took their business to  
15 Mann Bracken and NAF did not have to worry about losing, which is exactly how  
16 Defendants appealed to large creditors and dominated the consumer debt  
17 arbitration market for years. Indeed, while holding itself out to the public as  
18 independent and neutral, "[b]ehind closed doors, NAF [sold] itself to lenders as an  
19 effective tool for collecting debts."<sup>4</sup> BusinessWeek recently uncovered shocking  
20 examples of NAF's marketing to debt collectors, including a late 2007  
21 "confidential" Powerpoint presentation aimed at creditors that promised, among  
22 other things, "marked increase in recovery rates over existing collection methods."<sup>5</sup>  
23 The process of legitimizing alternative dispute resolution as an industry can only  
24 begin by requiring Defendants to disgorge their ill-gotten gains.

25  
26 \_\_\_\_\_  
27 <sup>4</sup> Robert Berner & Brian Grow, *Banks vs. Consumers (Guess Who Wins)*,  
BusinessWeek, June 5, 2008.

28 <sup>5</sup> *Id.*

1           12. Plaintiffs bring this lawsuit against Defendants on behalf of  
2 themselves and all other similarly situated consumers, alleging claims for breach of  
3 contract and violations of the Consumer Legal Remedies Act (“CLRA”),  
4 California Civil Code § 1750, *et seq.*; the Fair Debt Collection Practices Act  
5 (“FDCPA”), 15 U.S.C §1692, *et seq.*; the Rosenthal Fair Debt Collection Practices  
6 Act (“RFDCPA”), California Civil Code § 1788, *et seq.*; and California Business  
7 and Professions Code § 17200, *et seq.* and § 17500, *et seq.* for false advertising and  
8 unfair competition.

9           13. Plaintiffs are not aware of the true names and capacities of defendants  
10 sued as DOES 1 through 20, and therefore sue these defendants by such fictitious  
11 names. Each fictitiously named defendant is responsible in some manner for the  
12 occurrences alleged in this Complaint. Plaintiffs will amend this Complaint to add  
13 the true names of the fictitiously named defendants once they are discovered.

14           14. Each defendant knew or realized that the other defendants were  
15 engaging in or planned to engage in the violations of law alleged in this Complaint.  
16 Knowing or realizing that other defendants were engaging in such unlawful  
17 conduct, each defendant facilitated the commission of those unlawful acts. Each  
18 defendant intended to and did encourage, facilitate, or assist in the commission of  
19 the unlawful acts, and thereby aided and abetted the other defendants in the  
20 unlawful conduct.

21           15. Although each defendant purports to be a separate entity, in fact,  
22 Accretive is the alter ego of other defendants, as detailed below in the section,  
23 “Accretive Owns and Controls the Other Defendants.” At all relevant times, there  
24 existed a unity of interest and ownership between Accretive and the other  
25 defendants, such that any individuality and separateness between them ceased, and  
26 Accretive exerted control over each of the other defendants. Accretive directly  
27 owns and controls defendant Axiant, LLC, and indirectly owns and controls  
28 defendants Agora Fund I GP, LLC (“Agora”), NAF Inc., NAF LLC, Forthright,

1 and Mann Bracken. Adherence to the fiction of the separate existence of these  
2 defendants as entities distinct from Accretive will permit an abuse of the corporate  
3 privilege, condone deception and promote injustice.

4 16. Whenever reference is made in this Complaint to any act of  
5 defendants, such allegation shall mean that each defendant acted individually and  
6 jointly with the other defendants named in that cause of action.

7 17. Plaintiffs seek injunctive relief, actual, statutory and punitive  
8 damages, restitution, disgorgement of profits, and costs of suit, including  
9 attorneys' fees, as appropriate.

#### 10 JURISDICTION AND VENUE

11 18. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
12 §§ 1331 and 1640(e), and pursuant to 28 U.S.C. 1332(d), since there are at least  
13 100 class members in the proposed class, the combined claims of proposed class  
14 members exceed \$5,000,000, exclusive of interest and costs, and numerous class  
15 members are citizens of states other than Defendants' states of citizenship

16 19. This Court has personal jurisdiction over Defendants because  
17 Defendants conduct substantial business in this District, have sufficient minimum  
18 contacts with this state, and otherwise purposely avail themselves of the markets in  
19 this state through the promotion, sale, and marketing of their services in this state,  
20 to render the exercise of jurisdiction by this Court permissible under traditional  
21 notions of fair play and substantial justice.

22 20. Venue is proper pursuant to 28 U.S.C. 1391(a) because one of the  
23 Plaintiffs resides here, Defendants do business in this District and receive  
24 substantial fees from customers in this District, and a substantial part of the events  
25 or omissions giving rise to the claims occurred in this District.

#### 26 PARTIES

27 21. Plaintiff Anthony Magnone is a resident of Tarzana, California, in the  
28 County of Los Angeles. In 2008, Mann Bracken filed three arbitration claims

1 against him, and in each instance, NAF issued an award against Mr. Magnone in  
2 favor of Mann Bracken's client, non-party FIA Card Services ("Bank of  
3 America"). NAF never provided arbitration services or engaged in any decision  
4 making process before issuing the awards. Mr. Magnone's claims are asserted  
5 against all Defendants except Mann Bracken.

6 22. Plaintiff Randal Kinnunen is a permanent resident of the state of  
7 Washington.<sup>6</sup> Around December 3, 2008, Mann Bracken filed an arbitration claim  
8 against Mr. Kinnunen, and NAF issued an award against Mr. Kinnunen in favor of  
9 non-party Chase Bank "care of" Mann Bracken. NAF never provided arbitration  
10 services or engaged in any decision making process before issuing the award.

11 23. Defendant National Arbitration Forum, Inc. ("NAF Inc.") is a  
12 Minnesota limited liability company with its registered address and principal place  
13 of operations at 6465 Wayzata Blvd., St. Louis Park, Minnesota 55426. It does  
14 business as "National Arbitration Forum" and "Forum."

15 24. Defendant National Arbitration Forum, LLC ("NAF LLC") is a  
16 Delaware limited liability company with its registered address and principal place  
17 of operations at 6465 Wayzata Blvd., St. Louis Park, Minnesota 55426. It also  
18 does business as "National Arbitration Forum." NAF LLC is wholly owned by  
19 NAF Inc.

20 25. Defendant Dispute Management Services, LLC, d/b/a Forthright  
21 Solutions ("Forthright") is a Delaware limited liability company with its registered  
22 address and principal place of operations at 6465 Wayzata Blvd., St. Louis Park,  
23 Minnesota 55426. Forthright is 58% owned by NAF Inc. and 40% owned by the  
24 Agora Funds, which, in turn, are owned by Accretive LLC. Forthright and NAF  
25 LLC have a "services agreement" with one another, as described below.

26  
27 <sup>6</sup> At the time of the wrongdoing perpetrated on him, Mr. Kinnunen was a resident  
28 of South Carolina.

1           26. Collectively, Defendants NAF Inc., NAF LLC, and Forthright are  
2 referred as “NAF” throughout this Complaint. As detailed below, NAF was  
3 organized and operated as one entity until it split itself into three entities to obscure  
4 its relationship with the other Defendants named in this Complaint.

5           27. Defendant Accretive LLC (“Accretive”) is a Delaware limited liability  
6 company with its headquarters at 51 Madison Avenue, 31st Floor, New York, NY  
7 10010, and its registered address at 55 East 59th Street, 22nd floor, New York, NY  
8 10022. Accretive consists of a family of private equity funds under the control of  
9 investment manager J. Michael Cline (“Cline”). Throughout the Class Period,  
10 Accretive owned and controlled the other Defendants and aided and abetted their  
11 wrongful conduct.

12           28. Defendant Agora Fund I GP, LLC (“Agora”) is a Delaware limited  
13 liability company with its headquarters at 55 East 59th Street, 22nd floor, New  
14 York, NY 10022. Agora is the managing partner of Agora Fund I, LP, a Delaware  
15 limited partnership, Agora Fund I Coinvestment Partners, LP, a Delaware limited  
16 partnership, and Agora Fund I Holding Partners, a Delaware general partnership  
17 (collectively, the “Agora Funds”), which hold a 40% interest in defendant  
18 Forthright. Agora is under the control of Accretive’s Cline.

19           29. Defendant Axiant, LLC (“Axiant”) is a debt collector, headquartered  
20 in Huntersville, North Carolina, which bills itself as a “leading national provider of  
21 financial services and recovery management solutions for issuers and investors in  
22 debt products.” It is approximately 68% owned by non-party MB Acquisition  
23 Solutions Corp., which in turn is 100% owned by Accretive. The other 32% of  
24 Axiant is owned by the principals of what is now Mann Bracken.

25           30. Defendant Mann Bracken, LLP (“Mann Bracken”) is a debt collector,  
26 organized as a Delaware limited liability partnership, with principal offices in  
27 Rockville, Maryland. It is the successor firm that resulted from the merger of three  
28

1 large debt-collection law firms: California-based Eskanos & Adler, Georgia-based  
2 Mann Bracken, and Maryland-based Wolpoff & Abramson.

3 31. Both Mann Bracken's and Axiant's websites refer to a "strategic  
4 alliance" between the two entities. For example, Axiant states that it provides "call  
5 center collections facilitated through our strategic alliance with Mann Bracken,  
6 LLP" and that it provides both "national arbitration services" and "litigation  
7 services" "through Mann Bracken, LLP."

### 8 GENERAL ALLEGATIONS

9 32. Arbitration is a form of alternative dispute resolution that can offer  
10 substantial benefits in judicial access and efficiency. However, arbitration also  
11 exacts a price by requiring consumers to give up their rights to litigate the dispute  
12 or appeal the arbitration awards. Arbitration awards are binding on the parties and  
13 cannot be reviewed except in narrow circumstances.

14 33. Only a handful of arbitration service providers exist. NAF dominated  
15 consumer arbitrations in the credit card debt collections industry. Recent public  
16 enforcement actions challenge NAF's misrepresentations to the public that it is an  
17 independent and neutral arbiter. These lawsuits allege NAF's claims are  
18 contradicted by NAF's own reported statistics which reflect astounding success  
19 rates for businesses over consumers.

20 34. NAF's guaranteed success rate for businesses is hardly surprising  
21 given that NAF is owned by the same hedge fund group (Accretive) that owns debt  
22 collection agencies, Axiant and Mann Bracken, which arbitrated against consumers  
23 before NAF. As reported, NAF, Axiant, and Mann Bracken are under the common  
24 control and ownership of Accretive, which financially benefits from arbitration  
25 awards obtained by Axiant and Mann Bracken, and fees collected by NAF. Thus,  
26 the same control group that owns and controls debt collectors Axiant and Mann  
27 Bracken also owns and controls the purportedly independent NAF.

28

1 35. Defendants hid their financial affiliation for years until the Minnesota  
2 Attorney General's recent lawsuit revealed Defendants' true ownership structure,  
3 as summarized below.

4 **Accretive Owns and Controls Defendants**

5 36. Around June 2006, Accretive met with officers of NAF, which was  
6 then a single entity (the Forum), to discuss the possibility of Accretive acquiring a  
7 stake in the Forum. Accretive told NAF that it was "very impressed" with the  
8 Forum's arbitration business and wanted to assist the company with cash and  
9 future business. In return, Accretive sought a 40% stake in the Forum.

10 37. Around the same time, three large debt-collection law firms merged to  
11 form Mann Bracken, which in turn sold its assets and collections operations to  
12 Axiant -- a company created and owned by Accretive. The executives of the  
13 Forum were aware of this merger and sale.

14 38. As talks between Accretive and the Forum advanced, the two sides  
15 realized that any public acknowledgement of the relationship between the Forum,  
16 Accretive, and Axiant/Mann Bracken would destroy the Forum's credibility, and  
17 hence its ability to attract business and collect lucrative fees.

18 39. To avoid transparency, the two sides entered into multiple transactions  
19 which, among other things, involved the Forum splitting into three parts -- NAF  
20 Inc., NAF LLC, and Forthright. Thus, although NAF Inc., NAF LLC, and  
21 Forthright purport to be three separate companies, in fact, they are one and the  
22 same organization. They have key officers and directors in common, and their  
23 addresses and office spaces are identical.

24 40. In order to ensure Accretive received the 40% stake it bargained for,  
25 Accretive demanded that Forthright -- the only NAF company in which Accretive  
26 had a stake -- enter into a Services Agreement with NAF LLC. Around the same  
27 time, Accretive created several funds, called the Agora funds, which were  
28

1 registered to the same address as, and controlled by the same person that controlled  
2 Accretive. The Agora funds then purchased approximately 40% of Forthright.

3 41. As reported, the Services Agreement provided that Forthright would  
4 receive the bulk of the “arbitration services” revenue after costs, and would control  
5 much of the administrative aspects of arbitration. In return, Forthright received  
6 from NAF LLC a seven figure monthly fee plus a bonus fee calculated based on  
7 NAF LLC’s revenue.

8 42. Through its ownership in Forthright and the Services Agreement  
9 between NAF LLC and Forthright (imposed by Accretive), Accretive achieved  
10 exactly what it sought -- a 40% stake in the National Arbitration Forum, and  
11 equally important, significant ownership and control over *both* the major  
12 arbitration arm (NAF) and the major debt collection arm (Mann Bracken) of the  
13 consumer debt collections industry.

14 43. As reported, while negotiating these transactions, Accretive explained  
15 to NAF that “[o]ur investors have entrusted us with their funds on an assumption  
16 that we maintain a high level of governance oversight over our portfolio  
17 companies.” Accretive accomplished as much with NAF, exercising control over  
18 NAF in at least the following ways:

19 (a) Accretive directed NAF LLC and Forthright to enter into the  
20 Services Agreement to ensure itself a 40% stake in NAF;

21 (b) Accretive created, invested in and shared employees and offices  
22 with each of the Agora Funds, which in turn invested in and controlled NAF;

23 (c) Accretive provided, through its principals, resumes to NAF for  
24 NAF to consider in filling key positions, including the chief financial officer and  
25 chief operating officer;

26 (d) Accretive continually sought to enlarge NAF’s business by  
27 introducing new customers to NAF, helping NAF bid for new contracts, and  
28 seeking out new areas for NAF expansion;

1 (e) Accretive helped NAF devise public relations campaigns,  
2 including opposition to proposed federal legislation designed to weaken mandatory  
3 arbitration clauses; and

4 (f) Accretive required Forthright to submit detailed reports on its  
5 operations to Accretive.

6 44. Similarly, Accretive exercised control over Axiant and Mann  
7 Bracken, by among other things, owning 68.7% of Axiant, employing members of  
8 Axiant's Board of Directors, and requiring Mann Bracken to submit detailed  
9 reports on its operations (just as it required of Forthright).

10 **Defendants' Scheme Deceived Consumers and the Courts**

11 45. Many consumer credit contracts contain provisions mandating  
12 arbitration for disputes between the creditor and the consumer. NAF, as a major  
13 beneficiary of these mandatory arbitration provisions, sought to quell consumers'  
14 (well founded) fears by offering false assurances of integrity and impartiality,  
15 including the following posted on its website during the relevant time period:

16 We are guided by experience, integrity and innovation.  
17 Our commitment to professional and legal standards  
18 produces clear, unbiased rules, and we accord disputing  
19 parties rights and privileges consistent with those of the  
20 judicial system. The former judges and experienced  
21 attorneys who hear and decide our cases review the facts  
22 and render decisions based on known rules and  
23 substantive law.

24 46. To commence debt collection, Mann Bracken submitted a claim to  
25 NAF and mailed a "Notice of Arbitration," provided by NAF, to the consumer.  
26 The Notice falsely claimed that:  
27  
28

1 (a) NAF “is an independent and impartial arbitration organization”;  
2 and

3 (b) “Parties have a full and equal right to present relevant and  
4 reliable direct and cross examination testimony, documents, exhibits, evidence and  
5 arguments.”

6 47. The Notice of Arbitration directed consumers to the NAF Code,  
7 which also reinforced the misrepresentations, including the following:

8 (a) “[NAF] arbitrators are neutral, independent, experienced and  
9 knowledgeable about the applicable law”;

10 (b) “A neutral Arbitrator shall not serve if circumstances exist that  
11 create a conflict of interest or cause the Arbitrator to be unfair or biased”;

12 (c) “This code shall be interpreted to provide all Parties with a fair  
13 and impartial arbitration and with reasonable access to civil justice”; and

14 (d) “Awards shall be based upon a preponderance of the evidence  
15 presented, unless an agreement of the Parties or the applicable law provides  
16 otherwise.”

17 48. NAF’s website also contained numerous misrepresentations, including  
18 the following:

19 (a) NAF “accord[s] disputing parties rights and privileges  
20 consistent with those of the judicial system”;

21 (b) “Disputes are brought before a neutral third party (the  
22 arbitrator) who, after carefully reviewing all of the relevant information, issues a  
23 final decision in favor of one of the parties”;

24 (c) NAF “is independent and neutral. It is not affiliated with any  
25 party”;

26 (d) NAF “is an independent administrator of alternative dispute  
27 resolution services. Cases are heard and decided by unbiased legal experts”;  
28

1 (e) NAF's "dispute resolution processes are designed to provide  
2 both parties with an equal opportunity to prevail"; and

3 (f) "The Code of Procedure ensures all parties a fair, unbiased  
4 dispute resolution process."

5 49. NAF's alleged "Bill of Rights" contained similar misrepresentations,  
6 including the following:

7 (a) NAF provides a "justice system where claims are promptly  
8 resolved under the law by neutral legal experts at a cost commensurate with the  
9 matters in dispute";

10 (b) NAF's "Participatory Hearing provides parties with virtually the  
11 same procedures available in court trials before a judge: written claims and  
12 responses, reasonable discovery, useful motions, direct and cross examinations of  
13 witnesses, introduction of relevant and reliable exhibits, opening and closing  
14 statements, a prompt and detailed award"; and

15 (c) "The [NAF] Code of Procedure provides all parties with equal  
16 access to discovery and allows generally for the same discovery methods that are  
17 available in federal court."

18 50. The boilerplate awards rubber-stamped by NAF arbitrators, binding  
19 on consumers and relied upon by the courts, provided the following illusory  
20 "findings" and "conclusions," among others:

21 (a) "The Arbitrator has reviewed all evidence submitted in this  
22 case;"

23 (b) "The Arbitrator knows of no conflict of interests that exist;"

24 (c) "The evidence submitted supports the issuance of this Award;"

25 and

26 (d) "The applicable substantive law supports the issuance of the  
27 Award."

28

1           51. Defendants knew or should have known these statements to be false  
2 and misleading, and thus the statements constitute a deception on the courts and  
3 consumers.

4           52. The results of NAF's arbitrations stand in stark contrast to  
5 Defendants' misrepresentations. According to the San Francisco City Attorney's  
6 complaint filed on August 22, 2008, in California alone, from January 1, 2003 to  
7 March 31, 2007, NAF handled over 33,948 consumer collections matters, of which  
8 18,075 were disposed of by hearing before an arbitrator. In *all* cases where a  
9 business brought a claim against a consumer and the matter was disposed of by  
10 hearing, the NAF arbitrator ruled in favor of the business 100% of the time,  
11 assisted by the high rate of consumer defaults in these hearings. Indeed, only 30 of  
12 18,075 cases resulted in a consumer victory and *all* of these involved the rare case  
13 where a consumer brought a claim against a business.

14           53. The San Francisco City Attorney's allegations regarding NAF's track  
15 record are consistent with the allegations of a former NAF employee, who herself  
16 sought to avoid mandatory arbitration due to NAF's practices and sued Forthright.<sup>7</sup>  
17 According to this former employee's complaint, NAF routinely:

18           (a) directed arbitrators to change decisions if they were adverse to  
19 certain favored clients or potential clients (known within NAF as "Famous  
20 Parties");

21           (b) ensured that arbitrators who ruled against Famous Parties were  
22 not hired again;

23           (c) drafted claim forms for Famous Parties;

24           (d) drafted fictitious affidavits and/or proofs of service to  
25 consumers;

26  
27 <sup>7</sup> *Richert v. Nat'l Arbitration Forum, LLC et al.*, 0:09-cv-00763-ADM-JJK (Minn.  
28 Dist. Ct. filed April 2, 2009).

1 (e) failed to forward responses filed by consumers to arbitrators;  
2 and

3 (f) decided and issued its own rulings on procedural matters  
4 against consumers in lieu of an arbitrator's rulings.

5 54. The former employee also reported that NAF's arbitrators were aware  
6 of these practices. In fact, the former employee added that social gatherings were  
7 often held in which arbitrators attempted to curry favor with NAF management in  
8 order to receive more assignments. These assignments paid as much as \$325/hour.  
9 Incredibly, some arbitrators even called NAF's lawyers to ask them how they  
10 should rule on a particular case.

11 55. Similarly, BusinessWeek recently revealed a September 2007 NAF  
12 marketing PowerPoint presentation aimed at creditors, labeled as "confidential,"  
13 that not only promised a "marked increase" in collection recovery rates, but also  
14 "boasts[ed] that [a] creditor may request procedural maneuvers that can tilt  
15 arbitration in their favor. 'Stays and dismissals of action requests available without  
16 fee when request by Claimant -- allows claimant to control process and timeline.'"<sup>8</sup>  
17 According to an anonymous NAF arbitrator, these tactics allowed creditors to file  
18 actions even if they are not prepared, in that "[I]f there is no response [from the  
19 debtor], you're golden. If you get a problematic [debtor], then you can request a  
20 stay or dismissal."<sup>9</sup> Thus, in countless cases, a creditor received a default award,  
21 just because the debtor failed to respond to the notice of arbitration that was  
22 allegedly sent to him/her, and despite the creditor's failure to produce any evidence  
23 verifying the amount owed, or that the alleged debt was owed at all.

24  
25 \_\_\_\_\_  
26 <sup>8</sup> Robert Berner & Brian Grow, *Banks v. Consumers (Guess Who Wins)*,  
BusinessWeek, June 5, 2008.

27  
28 <sup>9</sup> *Id.*

1           56. Accordingly, NAF entered arbitration awards against consumers no  
2 matter how baseless the creditor's claim, including in cases where:

3           (a) the consumer was obviously not the same consumer who had  
4 incurred the debt but someone with a similar name;

5           (b) the consumer was a victim of identity theft;

6           (c) the consumer never received a notice of arbitration;

7           (d) Mann Bracken failed to prove the existence of an arbitration  
8 agreement between the creditor and consumer;

9           (e) Mann Bracken failed to document that it was lawfully  
10 authorized to collect the debt, or that there was an existing debt at all;

11           (f) the alleged debt is past the statute of limitations;

12           (g) the consumer sought to submit evidence or otherwise defend  
13 him/herself in the proceedings but was denied an opportunity to do so.

14           57. In addition to awarding debt collectors the amount of the debt they  
15 sought, NAF consistently awarded additional sums to cover "expenses" and  
16 "attorneys fees." These expenses included fees charged by NAF itself for its part  
17 in the arbitration process. Specifically, NAF charged an "Administrative Fee" for  
18 its services, ranging from about \$100 to over \$1,000, and collected the first \$50 of  
19 that fee at the time consumers filed their initial response to the Notice of  
20 Arbitration. Any portion of the fee that was not paid by the consumer up-front was  
21 later made part of NAF's "arbitration award."

22           58. As reported, NAF did not independently verify that any of the  
23 "expenses" (other than its own fees) were actually incurred by Mann Bracken or  
24 other debt collectors for their so-called debt collection services, nor did it even  
25 require Mann Bracken to account for its time spent on a matter before awarding it  
26 attorneys' fees.

27           59. Defendants sought to enforce these sham arbitration awards, which  
28 are virtually immune from judicial review, and included inflated amounts

1 exceeding the alleged debts owed, including illegitimate fees sought by Mann  
2 Bracken and NAF.

3 **Accretive Aided and Abetted the Deception Perpetrated on Consumers and**  
4 **the Courts**

5 60. Accretive aided and abetted the unfair and unlawful practices alleged,  
6 by, among other things:

7 (a) forming the Agora Funds in order to obscure the financial  
8 relationship amongst the Defendants;

9 (b) engaging in transactions to obscure its ownership and control  
10 relationship with the other Defendants; and

11 (c) advising creditors how to utilize NAF as a debt collection tool.

12 **CLASS ALLEGATIONS**

13 61. Plaintiffs brings this class action pursuant to Federal Rule of Civil  
14 Procedure 23, on behalf of themselves and others similarly situated. The “Class” is  
15 defined as follows:

16 All persons in the United States who had an arbitration  
17 award entered against them by NAF and in favor of  
18 Axiant, Mann Bracken or any of their predecessors  
19 and/or clients, between June 1, 2006 and the present (the  
20 “Class Period”).

21 62. The following persons shall be excluded from the Class: (a)  
22 Defendants and their owners, subsidiaries and affiliates; (b) all persons who make  
23 a timely election to be excluded from the proposed Class; (c) governmental  
24 entities; and (d) the judge(s) to whom this case is assigned and any immediate  
25 family members thereof.

26 63. Plaintiffs reserve the right to modify or amend the Class definition(s)  
27 before the Court determines whether certification is appropriate.

28

1           64. The Class is so numerous that joinder is impracticable. NAF's own  
2 publicly available records indicate that it has adjudicated hundreds of thousands of  
3 arbitrations during the Class Period.

4           65. This action involves common questions of law and fact, including the  
5 following:

- 6           a) Whether Defendants violated the California Consumer Legal  
7 Remedies Act, California Civil Code § 1760, *et seq.*  
8           b) Whether Defendants violated California Business &  
9 Professions Code § 17200, *et seq.* and § 17500, *et seq.*;  
10          c) Whether Defendants violated the Fair Debt Collection Practices  
11 Act, 15 USC § 1692, *et seq.*;  
12          d) Whether Defendants violated the Rosenthal Fair Debt  
13 Collection Practices Act, California Civil Code § 1788, *et seq.*;  
14          e) Whether Defendants' representations about legitimate  
15 arbitration services and awards were likely to deceive Plaintiffs  
16 and the Class;  
17          f) Whether Defendants knew, or should have known, that their  
18 representations were false and/or misleading;  
19          g) Whether consumers would have agreed to arbitrate consumer  
20 debt disputes before NAF had they known about Defendants'  
21 financial relationship with one another;  
22          h) Whether NAF breached its contracts with consumers;  
23          i) Whether Defendants were unjustly enriched as a result of  
24 Defendants' unlawful and unfair practices;  
25          j) Whether Class members were injured as a result of Defendants'  
26 conduct; and  
27          k) Whether Plaintiffs and the Class are entitled to relief, and the  
28 amount and nature of such relief.



1           72. NAF's arbitration services are "services" within the meaning of  
2 California Civil Code Section 1761(b).

3           73. Defendants violated the CLRA as follows:

- 4           a) In violation of Section 1770(a)(3), Defendants misrepresented  
5 their affiliation, connection, or association with one another;  
6           b) In violation of Section 1770(a)(5), Defendants misrepresented  
7 that NAF arbitrations have characteristics and benefits that they  
8 do not have;  
9           c) In violation of Section 1770(a)(9), Defendants advertised NAF  
10 arbitration services with an intent not to sell them as advertised.  
11 Defendants' advertisements were misleading to or likely to  
12 deceive the reasonable consumer; and  
13           d) In violation of Section 1770(a)(14), Defendants represented that  
14 NAF sponsored arbitrations confer rights or remedies which  
15 they do not have or involve, or which are prohibited by law.

16           74. Defendants concealed material facts regarding NAF arbitrations from  
17 Plaintiffs and the Class, including that NAF is conflicted by its ownership structure  
18 and unable to fairly and impartially decide arbitrations. This type of information is  
19 relied upon by consumers in making purchase decisions, and is fundamental to the  
20 decision to enter into, agree to be bound by, or attempt to appeal an arbitration.  
21 Had Defendants disclosed this material information regarding NAF arbitrations to  
22 Plaintiffs and the other class members, they would not have agreed to arbitration  
23 before NAF. These omissions of material fact violated California Civil Code  
24 Section 1770(a) sub sections (3), (5), (9), (14), and (19).

25           75. As a result of Defendants' conduct, Plaintiffs and the Class are  
26 entitled to actual and statutory damages, costs of litigation, attorneys' fees and  
27 such other relief authorized under the CLRA.

28



1 representing that the additional fees and costs awarded against consumers were  
2 lawful when they were not.

3 85. As a result of Defendants' violations of the FDCPA, Plaintiffs and the  
4 Class were harmed, and are entitled to injunctive relief, and to recover actual and  
5 statutory damages and attorneys' fees and costs pursuant to 15 U.S.C. § 1692k.

6 **FOURTH CAUSE OF ACTION**  
7 **(Violation of the Rosenthal Fair Debt Collection Practices Act)**

8 86. Plaintiffs incorporate the above allegations as if set forth herein.

9 87. Defendants are "debt collectors" within the meaning of California  
10 Civil Code § 1788.2(c).

11 88. Plaintiffs and the Class are "debtors" within the meaning of California  
12 Civil Code § 1788.2(h), and in doing the acts alleged, were attempting to collect  
13 alleged consumer debts.

14 89. Defendants were engaged in the attempted collection of consumer  
15 debts, and are legally bound to follow the prescriptions of the Rosenthal Fair Debt  
16 Collection Practices Act ("RFDCPA"), California Civil Code § 1788, *et seq.*

17 90. Defendants violated the RFDCPA, California Civil Code § 1788.17,  
18 through their violations of 15 U.S.C. §§ 1692 (e) and (f) of the FDCPA, by making  
19 false or misleading representations in their unfair attempts to collect debts from  
20 Plaintiffs and the Class.

21 91. Defendants' violations of the RFDCPA were intentional and/or  
22 malicious.

23 92. As a result of Defendants' violations of the RFDCPA, Plaintiffs and  
24 the Class were harmed and are entitled to damages under California Civil Code §  
25 1788.30.

26 **FIFTH CAUSE OF ACTION**  
27 **(Violation of Bus. & Prof. Code Section 17500 et seq.)**

28 93. Plaintiffs incorporate the above allegations as if set forth herein.



1 (d) California Business and Professions Code Section 17500 *et seq.*  
2 (False Advertising Law); and

3 (e) California Code of Civil Procedure, Section 1280 *et seq.*  
4 (California Arbitration Act).

5 101. Defendants' practices were unfair because any utility for Defendants'  
6 conduct is outweighed by the gravity of the consequences to Plaintiffs and the  
7 Class, and/or Defendants' conduct is immoral, unethical, oppressive, unscrupulous  
8 or substantially injurious to Plaintiffs and the Class.

9 102. Defendants' practices were fraudulent because they were likely to and  
10 did deceive Plaintiffs and the Class, and Defendants engaged in such practices  
11 knowingly.

12 103. Defendants' unfair and fraudulent practices include, but are not  
13 limited to, the following:

14 (a) promoting, marketing, and selling purportedly legitimate  
15 arbitration services, with no intent to provide them as advertised;

16 (b) charging and collecting improper and illegitimate fees and costs  
17 for arbitration services that were not rendered; and

18 (c) deceiving courts to confirm bogus arbitration awards as  
19 "judgments" falsely claiming they were issued by independent arbitrators.

20 104. As a result of Defendants' acts of unfair competition, Plaintiffs and  
21 the Class lost money and suffered injury in fact, and thus are entitled to restitution,  
22 injunctive relief and such other relief authorized under Section 17203.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly  
25 situated, pray for judgment, as follows:

26 A. An order certifying this case as a class action and appointing Plaintiffs  
27 and his counsel to represent the Class;

28

1 B. An order awarding Plaintiffs and the Class actual, consequential, and  
2 statutory damages to be determined at trial;

3 C. An order awarding exemplary damages in an amount to deter and  
4 punish;

5 D. An order awarding restitution and/or disgorgement and other equitable  
6 relief as the Court deems proper;

7 E. An injunction prohibiting Defendants from continuing to engage in  
8 unfair and unlawful business practices and false advertising, including prohibiting  
9 NAF from arbitrating disputes involving Mann Bracken or Axiant;

10 F. Pre- and post-judgment interest;

11 G. Attorneys' fees and costs of suit; and

12 H. Such other relief as the Court may deem just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs demand a trial by jury on all matters for which a jury trial is  
15 guaranteed.

16 DATED: September 1, 2009

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