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**UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**  
Sitting at Wichita

GALEN PAUL YUNKER, SUZANNE  
YUNKER and GREGORY YUNKER  
*Plaintiffs*

v.

RISE ABOVE DEBT RELIEF LLC;  
GLOBAL CLIENT SOLUTIONS, LLC;  
ROCKY MOUNTAIN BANK & TRUST; and  
STEVE WURNIG

*Defendants*

Case No. 09-CV- 1204 - 01 - JTM-KMH

**COMPLAINT**

COME NOW the plaintiffs, Galen Paul Yunker, Suzanne Yunker, and Gregory Yunker, by and through their attorney, Martin J. Peck, and for their causes of action against the defendants state as follows:

**PARTIES**

1. Plaintiffs Galen Paul Yunker, Suzanne Yunker and Gregory Yunker (collectively "the Yunkers") are all natural persons resident in Sumner County, Kansas.

2. Defendant Rise Above Debt Relief LLC ("Rise Above") is an Arizona limited liability company with a principal business address of Rise Above Debt Relief, LLC, 1834 E. Baseline Rd., Suite 202, Tempe, AZ 85283. Rise Above may be served with process through its registered agent, Phillip P. Guttilla, Ryley, Carlock & Applewhite, PA, 1 N. Central Ave., #1200, Phoenix, AZ 85004-4417.

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

3. Defendant Global Client Solutions, LLC (“Global”) is an Oklahoma limited liability company with a principal business address of 4500 S. 129th East Ave., Suite 175, Tulsa, Oklahoma, 74134. Global may be served with process through its registered agent, Timothy Merrick, 9820 E. 41st St., Suite 400, Tulsa, Oklahoma 74146.

4. Defendant Rocky Mountain Bank & Trust is a Colorado corporation with a principal business address of 101 E. Main, Florence, Colorado 81226. Rocky Mountain Bank and Trust may be served with process through its registered Agent, Douglas L. McClure, 755 Cheyenne Meadows, Colorado Springs, CO 80906.

5. Steve Wurnig is a natural person who is or was an agent of Rise Above. His present whereabouts are unknown.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) and, with respect to Count Five, 28 U.S.C. § 1331.

7. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(a)(2).

### **FACTUAL ALLEGATIONS UNDERLYING ALL COUNTS**

8. “Debt adjustment”—which is variously known as “debt management,” “credit counseling,” “prorating,” “debt consolidation,” “budget planning,” and “debt pooling”—is regulated in nearly every state.

9. In at least thirty-three states, debt adjustment contrary to state law is criminalized; in at least seven states, as a felony. The following states have criminal penalties associated with debt adjustment:

a. Arizona, see ARIZ. REV. STAT. § 6-133 (2008) (criminalizing, as a felony, violations of ARIZ. REV. STAT. §§ 6-703 & 6-715 (2008) (prohibiting unlicensed debt management), with “each day of violation [constituting] a separate offense”);

United States District Court, District of Kansas

COMPLAINT

*Yunker v. Rise Above Debt Relief, LLC*, et al.

Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

b. Arkansas, see ARK. CODE ANN. § 5-63-302 (2008) (criminalizing debt adjusting subject to exclusions contained in ARK. CODE ANN. § 5-63-305 (2008));

c. California, see CAL. FIN. CODE § 12102 (2008) (criminalizing operating as a prorater without a license as prohibited by CAL. FIN. CODE § 12200 subject to exclusions in CAL. FIN. CODE § 12100);

d. Connecticut, see CONN. GEN. STAT. § 36a-665 (2008) (criminalizing debt adjustment except for licensed non-profits pursuant to CONN. GEN. STAT. § 36a-656 (2008) and subject to exceptions contained in CONN. GEN. STAT. § 36a-663 (2008));

e. Delaware, see DEL. CODE ANN. tit. 11, § 910 (2009) (criminalizing debt adjustment except as permitted by licensees regulated by DEL. CODE ANN. §§ 2401A - 2439A (2009));

f. Florida, see FLA. STAT. § 817.806 (2009) (criminalizing, as a felony, violations of laws regulating debt management contained in FLA. STAT. §§ 817.801 to .806 (2009));

g. Hawaii, see HAW. REV. STAT. § 446-2 (2009) (criminalizing debt adjustment except as specifically permitted by HAW. REV. STAT. § 446-3 (2009));

h. Illinois, see 205 ILL. COMP. STAT. ANN. 665/16 (LexisNexis 2009) (criminalizing, as a felony, debt management without a license);

i. Indiana, see IND. CODE ANN. § 28-1-29-13 (LexisNexis 2009) (criminalizing debt management without a license);

j. Iowa, see IOWA CODE § 533A.13 (2008) (criminalizing debt management without a license);

k. Kansas, see K.S.A. 21-4402 (criminalizing debt adjustment except by Kansas licensed attorneys and those registered pursuant to the Kansas Credit Services Organization Act).

l. Kentucky, see KY. REV. STAT. ANN. § 380.990 (2009) (criminalizing debt adjustment except as specifically permitted by KY. REV. STAT. ANN. § 380.030 (2009));

m. Louisiana, see LA. REV. STAT. ANN. § 14:331 (2009) (criminalizing debt adjustment for profit);

n. Maryland, see MD. CODE ANN., FIN. INST. § 12-929 (2009) (criminalizing, as a felony, violations of the Maryland Debt

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

Management Services Act, MD. CODE ANN., FIN. INST. §§ 12-901 to -931 (2009));

o. Michigan, see MICH. COMP. LAWS § 451.434 (2009) (criminalizing, as a felony, violations of the Michigan Debt Management Act, MICH. COMP. LAWS §§ 451.411 to .437 (2009));

p. Missouri, see MO. REV. STAT. § 425.020 (2009) (criminalizing debt management except for “reasonable compensation” as defined by MO. REV. STAT. § 425.010(4) as being no more than \$50 as an initial fee plus \$35 per month);

q. Nebraska, see NEB. REV. STAT. ANN. § 69-1215 (LexisNexis 2009) (criminalizing unlicensed debt management);

r. Nevada, see NEV. REV. STAT. ANN. § 676.320 (LexisNexis 2009) (criminalizing unlicensed debt management) (repealed by 2009 Nev. Stat. 376 § 65 (enacting Uniform Debt-Management Services Act) *but see* 2009 Nev. Stat. 376 § 66 (“Transactions entered into before July 1, 2010, and the rights, duties and interests resulting from them may be completed, terminated or enforced as required or permitted by a law amended, repealed or modified by this act as though the amendment, repeal or modification had not occurred.”));

s. New Hampshire, see N.H. REV. STAT. ANN. § 399-D:24 (LexisNexis 2009) (criminalizing, as a felony for entities, unlicensed debt adjustment and establishing civil penalties and remedies);

t. New Mexico, see N.M. STAT. ANN. § 56-2-2 (2008) (criminalizing debt adjustment, except for persons excepted by N.M. STAT. ANN. § 56-2-4 (2008));

u. New York, see N.Y. GEN. BUS. § 457 (2009) (criminalizing debt management (called “budget planning” by N.Y. GEN. BUS. LAW § 455(1) (2009)) without a license as required by N.Y. BANKING LAW § 579 (2009));

v. North Carolina, see N.C. GEN. STAT. § 14-424 (2009) (criminalizing debt adjustment except by persons specifically permitted by N.C. GEN. STAT. § 14-426 (2009));

w. North Dakota, see N.D. Cent. Code 13-06-02 (2009) (criminalizing debt adjustment unless exempted under N.D. Cent. Code, § 13-06-03 (2009) which permits debt adjustment by, among others, “lawful practice of law in [North Dakota]” and “nonprofit or charitable corporations” but not for profit debt adjusters);

United States District Court, District of Kansas

COMPLAINT

*Yunker v. Rise Above Debt Relief, LLC, et al.*

Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

x. Ohio, see OHIO REV. CODE ANN. § 4710.99 (2009) (criminalizing debt adjustment not performed in conformance with OHIO REV. CODE ANN. § 4710.02 (2009));

y. Oregon, see OR. REV. STAT. § 697.990(3) (2007) (criminalizing failure to register to operate as a debt consolidating agency as required by OR. REV. STAT. § 697.612 (2007));

z. Pennsylvania, see 18 PA. CONS. STAT. § 7312 (2008) (criminalizing debt pooling except that conducted by Pennsylvania attorneys, certain uncompensated public welfare agencies, and non-profits);

aa. South Carolina, see S.C. CODE ANN. § 37-7-117 (2008) (criminalizing debt adjustment, among other things, without being licensed as required by S.C. CODE ANN. § 37-7-102 (2008));

ab. South Dakota, see S.D. CODIFIED LAWS § 37-34-2 (2009) (criminalizing debt adjustment except as permitted by S.D. Codified Laws § 37-34-3 (2009), which includes, among others, attorneys and those posting a bond with the attorney general);

ac. Tennessee, see TENN. CODE ANN. § 47-18-104(a) & (b) (2009) (criminalizing engaging in the business of debt adjusting without complying with the provisions of TENN. CODE ANN. § 47-18-104(b)(39) (2009), which imposes multiple requirements including maximum compensation);

ad. Vermont, see VT. STAT. ANN. tit. 8, § 4874 (2009) (criminalizing, as a felony—“[violators] shall be imprisoned not more than two years or fined not more than \$ 1,500.00, or both”—debt adjustment without obtaining a license as required by VT. STAT. ANN. tit. 8, § 4862 (2009));

ae. Washington, see WASH. REV. CODE ANN. § 18.28.190 (LexisNexis 2009) (criminalizing debt adjusting in violation of the provisions of Wash. Rev. Code Ann. § 18.28.010 to .910 (LexisNexis 2009));

af. West Virginia, see W. VA. CODE ANN. § 61-10-23 (LexisNexis 2008) (criminalizing debt pooling except for limited exceptions); and

ag. Wyoming, see WYO. STAT. ANN. § 33-14-103 (2008) (criminalizing debt adjustment in violation of WYO. STAT. ANN. § 33-14-102 (2008), which prohibits debt adjustment with the exception of that “incurred in the practice of law in this state”).

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC*, et al.  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

10. In at least thirteen states, debt adjustment is subject to regulation by civil and administrative enforcement. The following states have civil and administrative penalties associated with debt adjustment.

a. Colorado, see COLO. REV. STAT. §§ 12.14.5-201 to -242 (Uniform Debt-Management Services Act);

b. Georgia, see GA. CODE ANN. §§ 18-5-1 to 18-5-4 (regulating the business of debt adjustment);

c. Idaho, see IDAHO CODE ANN. § 26-2223(7) (2008) (requiring licensure for debt adjustment);

d. Maine, see ME. REV. STAT. tit. 32, § 6181 (2008) (prohibiting debt management without a license) (Technically, the license is called a “registration,” but a “registration may not be issued unless the administrator, upon investigation, finds that the financial soundness and responsibility, insurance coverage, consumer education programs and services component, character and fitness of the applicant and, when applicable, its partners, officers or directors, warrant belief that the business will be operated honestly and fairly within the purposes of this chapter.” ME. REV. STAT. tit. 32, § 6173(2) (2008));

e. Massachusetts, see MASS. GEN. LAWS ch. 180, 4A (limiting provision credit counseling services, including debt adjustment, to attorneys and nonprofit charitable corporations);

f. Minnesota, see MINN. STAT. § 332A.03 (2008) (prohibiting unregistered debt management);

g. Mississippi, see, MISS. CODE ANN. § 81-22-5 (2008) (prohibiting unlicensed debt management);

h. Montana, see MONT. CODE ANNO. § 30-14-2004 (2007) (prohibiting unlicensed debt management services);

i. New Jersey, see N.J. STAT. ANN. § 17:16G-6 (2009) (prohibiting unlicensed debt counseling and limiting licensees to “nonprofit social service” agencies and “nonprofit consumer credit counseling” agencies);

j. Rhode Island, see R.I. GEN. LAWS § 19-14.8-4 (2009) (prohibiting debt management without registration);

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC*, et al.  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

k. Texas, see TEX. FINANCE CODE § 394.204 (2009) (prohibiting engaging in a debt management service without registration);

l. Utah, see UTAH CODE ANN. § 13-42-104 (2008) (prohibiting debt management without registration); and

m. Virginia, see VA. CODE ANN. § 6.1-363.3 (2009) (prohibiting debt management without licensure).

11. Kansas requires that all debt adjusters register with the Office of the State Banking Commissioner. A listing of debt adjusters so registered as of May 29, 2009, is attached hereto as Plaintiff's Exhibit 1.

12. Leading up to June 2008, the Yunkers were working with a lawfully registered debt-management company.

13. On approximately June 5, 2008, Ms. Yunker was interested in finding out what "bankruptcy" entailed, and did research on line, including at a website called TotalBankruptcy.com. From there, she went to a Free Bankruptcy Help Form and filled out a questionnaire to see what she qualified for. In completing the questions, she listed her email address and phone number. A copy of a version of TotalBankruptcy.com's website as of June 12, 2009, is attached as Plaintiff's Exhibit 3.

14. In response to the information input into the form, she received a voice mail from Steve Wurnig, who is or was an agent of Rise Above.

15. Mr. Wurnig then sent Ms. Yunker an e-mail (addressed to Galen Yunker but emailed to Suzanne Yunker). The e-mail is time-stamped 8:51, and correct copy is attached hereto as Plaintiff's Exhibit 2. The e-mail includes the following language:

You went to TotalBankruptcy.com to learn about some alternatives to bankruptcy. I am a Certified Debt Counselor, and I'm educated on all of your options for debt relief. We can explore those together to decide what is in your best interest. If we can, let's try to set up an appointment to go over some things, and from there we can discuss what is the best direction. I am confident that I will be able to help you.

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

16. Plaintiff's Exhibit 2 also makes multiple references to Rise Above's reputation, asserting that "[b]ecause of our outstanding reputation, our company has been featured on **NBC News**" (emphasis original), and suggesting that the Yunkers "take time to look at our BBB report, it's always important to make sure you are dealing with a reputable company."

17. On Plaintiff's Exhibit 2, the title below Mr. Wurnig's name on the e-mail states that he is a "Certified National Debt Counselor."

18. Following that e-mail, Ms. Yunker then spoke on the phone with Mr. Wurnig for almost an hour and asked questions about her finances. He then sent Ms. Yunker the budget he had prepared for her said that he was sure they could help her with her debt relief. Mr. Wurnig did state in his phone conversation that she could always file for bankruptcy instead of going through with the program, but should try the program first. Mr. Wurnig said that the very worst part would be to immediately stop paying my credit cards and let them go into default. The next bad part would be in handling the "collection phone calls and harassment." Mr. Wurnig told her that Rise Above would help her with her answers to the creditors and to give as little information about "Rise Above Debt" as possible, because the creditors do not like to work with this kind of debt settlement places. Mr. Wurnig advised Ms. Yunker to include her son Greg with the plan, because one of her largest credit card balances was in the name of Greg and Suzanne. Greg Yunker also had two other smaller credit cards.

19. The budget (set up in Microsoft Excel) sent to Ms. Yunker was attached to an e-mail dated June 6, 2008 and time-stamped 10:53. A correct copy is attached hereto as Plaintiff's Exhibit 4.

20. Plaintiff's Exhibit 4 states that the attached budget "complies with the debt resolution requirements mandated by the FDCPA (Fair Debt Collection Practices Act)."

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

21. Plaintiff's Exhibit 4 also states that "Although my personal industry experience and banking background would recommend a debt settlement program, I always defer to our debt and credit law firm for their second opinion."

22. Plaintiff's Exhibit 4 also refers to the program as "attorney monitored."

23. Plaintiff's Exhibit 4 also states that "Settlement programs generally are structured for 24-48 months; whereby the client becomes completely debt free in that amount of time without bankruptcy and credit is restored 'naturally' from any blemishes that may occur."

24. Ms. Yunker completed all of the paperwork that had been sent to her and returned it to Rise Above.

25. On June 11, 2008, Mr. Wurnig sent the Yunkers an e-mail (attached hereto as Plaintiff's Exhibit 5) with an attached and Client Service Agreement (attached hereto Plaintiff's Exhibit 6).

26. Plaintiff's Exhibit 5 refers to the attached service agreement, and suggests that the Yunkers "read through it to understand how we are going to work together to eliminate your debt."

27. In Plaintiff's Exhibit 5, Mr. Wurnig again refers to himself as a "Certified National Debt Counselor."

28. The cover sheet on Plaintiff's Exhibit 6 includes the following language:

Being in debt is costly. With the debt solutions you receive from Rise Above Debt Relief, you can put those dollars back in your pocket where they belong.

As the fastest growing industry leader, we will work hard on your behalf to see that your debts are settled. In essence, we are your employees, and our entire staff of professionals is at your disposal.

Once again, Rise Above would like to thank you for your decision in letting us help you work through this difficult time. You are now taking the first steps to getting back on track. Leave the rest up

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

to us. Together we can accomplish what yesterday the average American family could only dream, A DEBT FREE LIFE!

29. Exhibit 6 includes the following language:

4. SETTLEMENT DEPOSITS. Based on industry experience, a consumer's chances of succeeding in a debt settlement program are better if a consumer sets aside funds for creditor settlements into a separate bank account. Company will assist Client in establishing a separate bank account in which to set aside settlement funds. Company will not distribute, or supervise, coordinate or control the distribution of any of Client's funds to Creditors. The recommended amount of the monthly SETTLEMENT DEPOSIT is \$630.41. From this, Client authorizes payment to Company of Client's Enrollment Fee, Maintenance Fee, and Education Fee. The remainder will accumulate to pay debt settlements to creditors. Company, or a law firm negotiating with Client's creditors, may make recommendations to Client as to settlement payments to creditors, but the final decision as to whether to make any payment to any creditor will be Client's. Client may make additional deposits (above Client's monthly settlement deposits) to this account to increase funds available to settle Client's debts. Client will have online access to the bank account to view the deposits and withdrawals made. Except for funds necessary to pay Company's fees, all funds in this account will be the property of Client, and may be withdrawn by Client at any time.

30. On June 17, 2008, the Yunkers executed an "Authorization to Debit Bank Account" in which they authorized Global "as an agent of Rocky Mountain Bank & Trust" to debit the Yunkers' account in Caldwell, Kansas, "for the purpose of transferring funds to an account I am in the process of establishing with Rocky Mountain Bank and Trust." The authorization also states that "I understand that I my subsequently design-ate [*sic*] another account for the purpose of transferring funds to my account at Rocky Mountain Bank & Trust by contacting" Global and that "Global may terminate this authorization on behalf of Rocky Mountain Bank & Trust by providing me" a specified notice. The June 17 document is attached hereto as Plaintiff's Exhibit 14.

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

31. On July 3, 2008 (according to the document's date) Global sent a welcome letter to the Yunkers stating, in part, that "We are the processor for all activity related to your account at Rocky Mountain Bank and Trust ('RMBT')." Throughout the letter, Global refers to the funds as "your account" at Rocky Mountain Bank and Trust. The letter also notes that the Yunkers (or at least Suzanne Yunker) is a client of Rise Above Debt Relief LLC, and that "any questions regarding negotiation of debts and the status of your debt management program should be directed to Rise Above Debt Relief LLC. Additionally, any questions regarding changes to your draft or deposit schedule should be directed to Rise Above Debt Relief LLC because changes to those schedules could directly impact future creditor payments or negotiations." The July 3 document is attached hereto as Plaintiff's Exhibit 15.

32. On August 1, 2008, the Yunkers executed a "Special Purpose Account Application," which states in part that the application is "to establish a special purpose account (the 'Account') with Rocky Mountain Bank & Trust of Colorado Springs, Colorado ("Bank") for the purpose of accumulating funds to repay my debts in connection with a debt management program." The application also states that "I hereby authorize Bank, through its agent Global Client Solution [*sic*], LLC ('Global') to administer the Account on my behalf" by transferring funds in and out. The application also states, in a separate section "I hereby authorize Bank, through its agent Global, to initiate debit entries to" the Yunkers' bank account. The August 1 document is attached hereto as Plaintiff's Exhibit 16.

33. Over the course of the relationship between the Yunkers and Global, Global sent statements to the Yunkers, copies of some of which are attached as Plaintiff's Exhibit 17.

34. As of June 16, 2009, although Global still had money in the account asserted to be the Yunkers', Ms. Yunker called Rocky Mountain Bank & Trust and inquired as to

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

whether they believed her to be a customer or have an account there. The woman who answered the phone inquired as to whether Ms. Yunker was “with Global,” and upon receiving an affirmative response, indicated that Ms. Yunker needed to contact Global.

35. In response to demand made by the plaintiffs, Global and Rocky Mountain Bank and Trust have reasserted their agency relationship.

36. From September 2008 to June of 2009, at least ten statements were sent from Global to the Yunkers. In each of those months, Global accepted money from the Yunkers, and on each of those statements Global charged at least three fees on behalf of Global and Rise Above; on the June 5 statement Global charged five fees, for a total of 32 fees being charged over the course of the ten statements. It appears that over that time frame, Global distributed money to three of the Yunkers’ creditors.

37. In September of 2008, Linda Klinger, the principal of Klinger Law Corporation, a California corporation, d/b/a “Klinger Law Center” apparently became affiliated with Rise Above, which sent documents entitled “Authorization for Attorney Services” to the Yunkers on Ms. Klinger’s behalf. A copy of that document, as executed by the Yunkers, is attached as Plaintiff’s Exhibit 11.

38. In November 2008, Rise Above sent additional documents to the Yunkers on Ms. Klinger’s behalf. These documents were entitled “Klinger Law Center Authorization for Attorney Services” and “Klinger Law Center Limited Power of Attorney.” A copy of those documents, as executed by the Yunkers, are attached as Plaintiff’s Exhibit 12. The documents apparently mistakenly assert that the Yunkers have hired “Preferred Debt Solutions” for debt settlement.

39. Linda Klinger never countersigned the attorney agreements, and never considered herself to be counsel for any of the Yunkers.

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

40. In March of 2009, Audrey Ritter d/b/a The Ritter Law Group, apparently became affiliated with Rise Above, which sent a document entitled "Ritter Law Group Agreement for Limited Attorney Services" to the Yunkers on Ms. Ritter's behalf. A copy of that document is attached as Plaintiff's Exhibit 13.

41. Audrey Ritter never countersigned the attorney agreements, and never considered herself to be counsel for any of the Yunkers.

42. During the course of their association with Rise Above, the Yunkers were assisted with Kansas litigation, including by Ms. Cody Helfand, an agent of Rise Above.

43. Some time prior to March 31, 2009, Ms. Helfand spoke with Ms. Yunker regarding *HSBC Bank Nevada v. Suzanne Yunker*, Sumner County, Kansas, District Court case number 2009 LM 135. She followed that phone call up with an e-mail dated March 31, 2009 in which indicated that "we are in receipt of your summons and have reviewed it" and asked a variety of questions regarding the litigation. A copy of that e-mail is attached as Plaintiff's Exhibit 7.

44. Ms. Helfand attempted to negotiate the debts with Kramer & Frank, HSBC's attorneys, but Kramer & Frank would not negotiate with Ms. Helfand or Rise Above. Ms. Helfand therefore drafted a letter for the Yunkers to send to Kramer & Frank regarding the accounts upon which Kramer & Frank were suing Ms. Yunker. A copy of the e-mail is attached as Plaintiff's Exhibit 8 and a copy of the drafted letter is attached as Plaintiff's Exhibit 9.

45. On or about April 29, 2009, Ms. Helfand had a phone conference with Galen and Suzanne Yunker in which she discussed their response to a law suit pending in Kansas against Greg Yunker: *FIA Card Services N.A. v. Greg R. Yunker*, Sumner County, Kansas, District Court case number 2009 LM 211.

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC*, et al.  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

46. Ms. Helfand followed that phone call up with an e-mail dated April 29, 2009 (Plaintiff's Exhibit 10). In that e-mail, Ms. Helfand states as follows:

Hello, it was nice speaking with you. As we discussed on the phone, you will be filing a response to the summons. You need to go to the court house listed on the summons and see the court clerk. There may be a filing fee anywhere between \$15 to \$100+ depending on your state and court house. Once you see the court clerk, all you are going to do is "FILE A RESPONSE TO THE COMPLAINT OR SUMMONS." Most court houses have a form for this, including check mark boxes and a section for other. All we recommend you do is "REQUEST PROOF OF DEBT." If there is a check mark box for that, mark it, if not hand write "REQUESTING PROOF OF DEBT" in the other section. For some small chance that the court house does not have a form for this, you can type up a letter before going to the court house & bring it with you to turn in just in case. When typing up a letter, simply include the following: your name, address, phone number, and write I am responding to complaint / summons and am requesting proof of debt. Something as simple as that satisfies the need to respond to the summons. We are recommending you do this for a couple of reasons: we do not want you to be held in contempt of court and this by's [sic] more time to work the account, and the simple fact that you have so many credit cards you are not exactly sure which card this is. Reason to require proof of debt is that it has the original creditor supplies [sic] you with any statement you may have signed when first signing up for the card. I hope this helps.

47. Ms. Helfand, Ms. Ritter, and Ms. Klinger are affiliated with Lifeline Consulting Group, Inc., a California corporation d/b/a "My Debt Company", which performed services for the Yunkers as an agent of Rise Above. A separate settlement of the plaintiffs' claims against Ms. Helfand, Ms. Ritter, Ms. Klinger, and Lifeline was effected prior to the initiation of the instant action.

48. Over the course of their affiliation with the defendants, the Yunkers paid no less than \$7,593.16 toward their debt settlement program.

49. Rise Above charged an "Administrative Fee" of \$557.21 in the first month of the Yunkers' program and \$278.61 eleven more times during the Yunkers' association with Rise Above. Additionally, Rise Above charged three \$100.00 "Maintenance Fees" and nine more \$55.00 maintenance fees. These fees total \$4,416.92. The maximum any registered

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

credit services organization (of which there are many, see Plaintiff's Exhibit 1) could have charged for the same time frame would be \$290.00.

**COUNT ONE: KANSAS CREDIT SERVICES  
ORGANIZATION ACT**

50. Paragraphs 1 through 49 are hereby incorporated by reference as though fully set out.

51. Rise Above Debt Relief LLC, Global Client Solutions, LLC, Rocky Mountain Bank & Trust, and Steve Wurnig, are each a "credit services organization" as that is defined by K.S.A. 50-1117(a).

52. Rise Above Debt Relief LLC, Global Client Solutions, LLC, and Rocky Mountain Bank & Trust, are collectively a "credit services organization" as that is defined by K.S.A. 50-1117(a).

53. None of Rise Above Debt Relief LLC, Global Client Solutions, LLC, Rocky Mountain Bank & Trust, or Steve Wurnig are registered with the Kansas State Bank Commissioner as credit services organizations pursuant to K.S.A. 50-1118, or otherwise.

54. Rise Above Debt Relief LLC, Global Client Solutions, LLC, Rocky Mountain Bank & Trust, and Steve Wurnig are all, collectively and separately, in violation of K.S.A. 50-1121(f).

55. Violation of K.S.A. 50-1121(f) by Rise Above Debt Relief LLC, Global Client Solutions, LLC, Rocky Mountain Bank & Trust, and Steve Wurnig is defined by K.S.A. K.S.A. 50-1132 as being a deceptive act in violation of the KCPA. The collective and separate operation by Rise Above Debt Relief LLC, Global Client Solutions, LLC, Rocky Mountain Bank & Trust, and Steve Wurnig as credit services organizations therefore also violates K.S.A. 50-626.

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

56. Rise Above Debt Relief LLC, Global Client Solutions, LLC, and Rocky Mountain Bank & Trust have operated as credit services organizations from no later than June 17, 2008 to at least June 16, 2009, which is no less than 364 days.

**COUNT TWO: KANSAS CONSUMER PROTECTION ACT  
AGAINST GLOBAL CLIENT SOLUTIONS, LLC, AND  
ROCKY MOUNTAIN BANK & TRUST FOR FAILURES TO  
STATE MATERIAL FACTS**

57. Paragraphs 1 through 49 are hereby incorporated by reference as though fully set out.

58. In none of the communications from Global or Rocky Mountain Bank and Trust did either disclose that neither was authorized to act as a credit services organization pursuant to Kansas law or are lawfully permitted to provide the proposed services to Kansas residents. This is deceptive in violation of K.S.A. 50-626(a) as defined by K.S.A. 50-626(b)(3) as the wilful failure to state a material fact or the wilful omission of a material fact.

**COUNT THREE: KANSAS CONSUMER PROTECTION  
ACT DECEPTION CLAIMS AGAINST RISE ABOVE DEBT  
RELIEF, LLC**

59. Paragraphs 1 through 49 are hereby incorporated by reference as though fully set out.

60. Mr. Wurnig's assertions in Plaintiff's Exhibits 2 and 5 that he was a "Certified Debt Counselor" and a "Certified National Debt Counselor" are deceptive in violation of K.S.A. 50-626(a) as defined by K.S.A. 50-626(b)(1)(A) & (B), in that the assertion of a "certification" amounts to a representation that Mr. Wurnig had approval or status he did not have, and that the services to be provided by Rise Above had sponsorship, characteristics, or qualities that they do not have.

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

61. Mr. Wurnig's assertions regarding his education on all of the Yunkers' options with respect to debt relief, and an offer to work through these with the Yunkers to determine what is in their best interest amounts to an attempt to practice law in Kansas in violation of the Kansas supreme court rules, and are deceptive under K.S.A. 50-626 and unconscionable in violation of K.S.A. 50-627.

62. Mr. Wurnig fails to disclose any communication that neither he nor Rise Above are lawfully permitted to provide the proposed services to Kansas residents. This is deceptive in violation of K.S.A. 50-626(a) as defined by K.S.A. 50-626(b)(3) as the wilful failure to state a material fact or the wilful omission of a material fact.

63. The advertisement for TotalBankruptcy.com does not indicate that it relates to alternatives to bankruptcy (see Plaintiff's Exhibit 3); rather it would be taken by an ordinary person to imply that the website relates to alternatives within bankruptcy. This advertisement, and Mr. Wurnig's reliance on it, to the extent it relates to Rise Above, is deceptive in violation of K.S.A. 50-626(a) as defined by K.S.A. 50-626(b)(5).

64. The assertion in Plaintiff's Exhibit 5 that the budget planner somehow complies with the "debt resolutions requirements" of the FDCPA has no basis in law and is therefore deceptive in violation of K.S.A. 50-626(a) as defined by K.S.A. 50-626(b)(1)(A), (b)(1)(F) & (b)(2).

65. The determination as to whether the Yunkers would be better served by Mr. Wurnig's and Rise Above's debt management services or by some other legal option was not ever made by any attorney, let alone one representing the Yunkers. The assertions that such a review would occur in Plaintiff's Exhibit 5 constitute deceptive acts in violation of K.S.A. 50-626(a) as defined by K.S.A. 50-626(b)(1)(A), (b)(1)(D), and (b)(2).

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC*, et al.  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

66. Ms. Helfand's advice provided to the Yunkers constitutes the unauthorized practice of law, which the plaintiffs contend is both deceptive in violation of K.S.A. 50-626(a) and unconscionable in violation of K.S.A. 50-627(a).

67. Nowhere in any of her communications does Ms. Helfand disclose that neither she nor Rise Above are lawfully permitted to engage in the transactions proposed in Kansas, both because neither was licensed to practice law nor registered as a credit services organization. Each such failure is deceptive in violation of K.S.A. 50-626(a) as defined by K.S.A. 50-626(b)(3) as the wilful failure to state a material fact or the wilful omission of a material fact.

68. Nowhere in communications from Rise Above regarding Ms. Klinger and Ms. Ritter does Rise Above disclose that neither Ms. Klinger nor Ms. Ritter, nor Rise Above are lawfully permitted to perform the services proposed in Kansas, both because none was licensed to practice law nor registered as a credit services organization. Each such failure is deceptive in violation of K.S.A. 50-626(a) as defined by K.S.A. 50-626(b)(3) as the wilful failure to state a material fact or the wilful omission of a material fact.

69. Rise Above's assertion that Ms. Klinger, and then Ms. Ritter, were working on the Yunkers' behalf, when neither attorney considered herself retained by the Yunkers, was deceptive in violation of K.S.A. 50-626(a).

**COUNT FOUR: KANSAS CONSUMER PROTECTION ACT  
UNCONSCIONABILITY CLAIMS AGAINST  
RISE ABOVE DEBT RELIEF, LLC**

70. Paragraphs 1 through 49 are hereby incorporated by reference as though fully set out.

71. Rise Above charged an "Administrative Fee" of \$557.21 in the first month of the Yunkers' program and \$278.61 eleven more times during the Yunkers' association with

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

Rise Above. Additionally, Rise Above charged three \$100.00 “Maintenance Fees” and nine more \$55.00 maintenance fees. These fees total \$4,416.92. The maximum any registered credit services organization (of which there are many, see Plaintiff’s Exhibit 1), for the same time frame would be \$290.00. See K.S.A. 50-1126(b)(1) & (2). The excessive charge violates K.S.A. 50-627(a) as illustrated by K.S.A. 50-627(b)(2).

72. Mr. Wurnig’s assertions regarding his education on all of the Yunkers’ options with respect to debt relief, and his offer to work through these with the Yunkers to determine what is in their best interest amounts to an attempt to practice law in Kansas in violation of the Kansas supreme court rules, and are deceptive under K.S.A. 50-626 and unconscionable in violation of K.S.A. 50-627.

73. Ms. Helfand’s advice provided to the Yunkers constitutes the unauthorized practice of law, which the plaintiffs contend is both deceptive in violation of K.S.A. 50-626(a) and unconscionable in violation of K.S.A. 50-627(a).

#### **COUNT FIVE: CREDIT REPAIR ORGANIZATIONS ACT**

74. Paragraphs 1 through 49 are hereby incorporated by reference as though fully set out.

75. The assertions contained in Plaintiff’s Exhibits 2, 5, and 6 regarding restoration of credit subject Rise Above to the provisions of the Credit Repair Organizations Act (“CROA”) pursuant to 15 U.S.C. § 1679a(3)(A).

76. Rise Above’s seeking and collecting of fees prior to performing “any service” is a violation of 15 U.S.C. § 1679b(b).

77. The disclosures required by 15 U.S.C. § 1679c were never made to the Yunkers by Rise Above.

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

### DEMAND FOR JUDGMENT

WHEREFORE, based on the foregoing, the plaintiffs demand judgment as follows, together with their costs and such other relief as the Court may determine them to be entitled at law or in equity:

78. **Count One.** On Count One, the plaintiffs demand judgment as follows:

1. Against Rise Above Debt Relief LLC, Global Client Solutions, LLC, Rocky Mountain Bank & Trust, and Steve Wurnig, jointly and severally, for violations of K.S.A. 50-1121(f), the amount of \$7,593.16, plus reasonable attorney fees, court costs, and punitive damages pursuant to K.S.A. 50-1133;

2. Against Rise Above Debt Relief LLC, for violations of K.S.A. 50-626(a), penalties of up to \$3,640,000.00, in favor of each plaintiff together with a reasonable attorney fee pursuant to K.S.A. 50-634;

3. Against Global Client Solutions, LLC, for violations of K.S.A. 50-626(a), penalties of up to \$3,640,000.00, in favor of each plaintiff together with a reasonable attorney fee pursuant to K.S.A. 50-634;

4. Against Rocky Mountain Bank & Trust, for violations of K.S.A. 50-626(a), penalties of up to \$3,640,000.00, in favor of each plaintiff together with a reasonable attorney fee pursuant to K.S.A. 50-634;

5. Against Steve Wurnig, for violations of K.S.A. 50-626(a), penalties of up to \$50,000.00, in favor of each plaintiff together with a reasonable attorney fee pursuant to K.S.A. 50-634;

6. Against Rise Above Debt Relief LLC, Global Client Solutions, LLC, Rocky Mountain Bank & Trust, and Steve Wurnig, a declaration that their activities violate the KCPA pursuant to K.S.A. 50-624(a)(1); and

7. Against Rise Above Debt Relief LLC, Global Client Solutions, LLC, Rocky Mountain Bank & Trust, and Steve Wurnig, an injunction against continuing to operate as credit services organizations, pursuant to K.S.A. 50-1134 and K.S.A. 50-634(a)(2).

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC, et al.*  
Case No. 09-CV-\_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

79. **Count Two.** On Count Two, the plaintiffs demand judgment against Global Client Solutions, LLC, and Rocky Mountain Bank & Trust, jointly and severally, for violations of K.S.A. 50-626(a), penalties of up to \$110,000.00 in favor of each plaintiff together with a reasonable attorney fee pursuant to K.S.A. 50-634.

80. **Count Three.** On Count Three, the plaintiffs demand judgment against Rise Above Debt Relief LLC, for violations of K.S.A. 50-626(a), penalties of up to \$190,000.00 in favor of each plaintiff together with a reasonable attorney fee pursuant to K.S.A. 50-634.

81. **Count Four.** On Count Four, the Yunkers demand judgment against defendant Rise Above Debt Relief, LLC in the amount of \$4,416.92 as damages pursuant to K.S.A. 50-634(b), a civil penalty in an amount not exceeding \$20,000.00 pursuant to K.S.A. 50-636(a) & 50-634(b), and a reasonable attorney fee pursuant to K.S.A. 50-634(e).

82. **Count Five.** On Count Five, the plaintiffs demand judgment against defendant Rise Above Debt Relief LLC in the amount of \$7,593.16.

#### **JURY DEMAND**

Plaintiffs demand a trial by jury.

#### **DESIGNATION OF PLACE OF TRIAL**

Plaintiffs designate Wichita, Kansas, as the place of trial.

#### **NOTICE OF ATTORNEY LIEN**

Plaintiff and plaintiff's counsel hereby gives notice that plaintiffs' counsel claims, pursuant to K.S.A. 7-108, an attorney lien on any and all proceeds due or paid to the plaintiffs.

United States District Court, District of Kansas  
COMPLAINT  
*Yunker v. Rise Above Debt Relief, LLC*, et al.  
Case No. 09-CV-\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_

### CONCLUSION

Wherefore, the plaintiff requests that the Court grant the relief set out in this Complaint.

Respectfully submitted,

/s/ Martin J Peck  
\_\_\_\_\_  
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