

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

GARY A. WALKER,

Plaintiff,

v.

TRUEACCORD CORP.,

Defendant,

Civil Action No.6:22-cv-00034

COMPLAINT

NOW COMES, GARY A. WALKER (“Plaintiff”), through his undersigned counsel, complaining of TRUEACCORD CORP., (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action seeking redress for Defendant’s violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692 *et seq.*, Regulation F (“Reg F”), 12 CFR 1006 *et seq.*, and the Texas Debt Collection Act (“TDCA”) pursuant to Tex. Fin. Code Ann. §392 *et seq.*

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331.
3. This Court has supplemental jurisdiction over Plaintiff’s state law claim pursuant to 28 U.S.C. § 1367.
4. Venue in this district is proper under 28 U.S.C. § 1391(b)(2).

PARTIES

5. GARY A. WALKER is a natural person, over 18-years- of-age, who at all times relevant resided in TYLER, TEXAS.

6. Plaintiff is a “consumer” as defined by 15 U.S.C. §1692a(3).

7. Plaintiff is a “consumer” as defined by Tex. Fin. Code Ann. §392.001(1).

8. TRUEACCORD CORP. is a corporation with its principal place of business at 16011 College Boulevard, Suite 130, Lenexa, Kansas 66219.

9. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6) because (1) the principal purpose of Defendant’s business is the collection of debt owed or due or asserted to be owed or due another; and (2) it regularly collects consumer debt owed to others.

10. Defendant is a “debt collector” as defined by Tex. Fin. Code Ann. § 392.001(6) and (7).

FACTUAL ALLEGATIONS

11. Prior to the events giving rise to this action, Plaintiff obtained a high interest payday loan from Spotloan.com (“subject debt”).

12. Unfortunately, due the loans high interest rate, Plaintiff was unable to sustain timely payments and later defaulted on the subject debt.

13. Subsequently thereafter, the subject debt was transferred to Defendant for collections.

14. Throughout the year 2021 into early 2022, Defendant would regularly send electronic collection notices to Plaintiff’s email gaw6756@gmail.com.

15. At all times relevant, Plaintiff was the sole operator, possessor, and subscriber of the email address gaw6756@gmail.com.

16. Eventually, Plaintiff became unhappy with the amount of burdensome emails he was receiving from Defendant.

17. Initially, Plaintiff would review Defendant's emails and select the "unsubscribe" hyperlink located at the bottom of Defendant's email.

18. After selecting the "unsubscribe" hyperlink, Defendant's email system would initiate a response stating: "...we will stop sending emails to gaw6756@gmail.com."

19. Plaintiff believed that if he selected the "unsubscribe" hyperlink then Defendant's emails would cease.

20. Unfortunately, despite unsubscribing from Defendant's emails, Defendant continued to send dozens of unconsented emails to Plaintiff attempting to collect the subject debt.

21. Upon information and belief, Defendant has no way of monitoring which consumers have given or revoked consent to be contacted electronically via email.

22. Despite providing a hyperlink to unsubscribe from emails, Defendant failed to provide a reasonable and simple method for Plaintiff to permanently opt out of electronic communications.

23. Specifically, it would be misleading and/or unconscionable to the average consumer to be given a method for opting out of electronic communications by Defendant, but *fails* to actually remove or opt out the recipient's email address from additional communications.

24. Frustrated over Defendants' conduct, Plaintiff spoke with an attorney regarding his rights.

DAMAGES

25. Defendant's harassing and unfair collection conduct has severely disrupted Plaintiff's daily life and general well-being.

26. Plaintiff has expended time and incurred costs consulting with his attorneys as a result of Defendant's false, deceptive, harassing, and misleading collection efforts.

27. Defendant's illegal collection activities have caused Plaintiff actual harm, including but not limited to, invasion of privacy, nuisance, wasting Plaintiff's time, emotional distress, aggravation that accompanies unsolicited debt collection efforts, harassment, anxiety, and loss of concentration.

28. Concerned about the violations of his rights and invasion of his privacy, Plaintiff sought the assistance of counsel to permanently cease Defendant's unlawful collection efforts.

CLAIMS FOR RELIEF

COUNT I:

Violations of the Fair Debt Collection Practices Act (15 U.S.C. §1692 *et seq.*)

29. All previous paragraphs of this Complaint are expressly adopted and incorporated herein.

30. Defendant used electronic mail to attempt to collect the alleged debt and, as such, engaged in "communications" as defined in FDCPA §1692a(2).

31. Defendant's communications to Plaintiff were made in connection with the collection of the subject debt.

32. Defendant violated 15 U.S.C. §§1692c(a)1, d, e, and e(10), through its unlawful debt collection practices regarding the collection of the subject debt.

a. Violations of FDCPA §1692c

33. Defendant violated §1692c(a)(1) when it continuously sent Plaintiff electronic messages after Plaintiff unsubscribed from receiving further electronic mail from Defendant. This repeated behavior of continuously and systematically sending electronic mail to Plaintiff after he demanded that it cease contacting him was harassing and abusive. Even after being told to stop contacting him, Defendant continued its onslaught of electronic mail with the specific goal of oppressing and abusing Plaintiff into paying the subject debt.

b. Violations of FDCPA §1692d

34. Pursuant to §1692d of the FDCPA, a debt collector is prohibited from engaging “in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” 15 U.S.C. §1692d.

35. As set forth above, Plaintiff requested that Defendant cease its collection emails by unsubscribing many times.

36. Despite being notified that its collection emails were unwanted, Defendant made the conscious decision to continue its harassing collection emails, which were clearly inconvenient to Plaintiff.

37. Defendant’s conduct in systematically placing collection emails to Plaintiff’s email address is inherently harassing and abusive.

38. Defendant’s collection emails to Plaintiff were made with the specific intent of annoying, harassing, and abusing Plaintiff as Plaintiff informed Defendant he no longer wished to be contacted on his email.

39. The fact that Defendant knowingly placed emails to Plaintiff after Plaintiff made requests that the emails cease is illustrative of Defendant’s intent to harass and annoy Plaintiff.

c. Violations of FDCPA §1692e

40. Pursuant to § 1692e of the FDCPA, a debt collector is prohibited from making “any false, deceptive, or misleading representation” in connection with the collection of a debt. 15 U.S.C. §1692e.

41. Pursuant to §1692e(10) of the FDCPA, a debt collector is prohibited from making false representations or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. 15 U.S.C. § 1692e(10).

42. Defendant violated §§ 1692e and e(10) of the FDCPA by falsely representing to Plaintiff that in order to cease its collection emails, Plaintiff should select unsubscribe at the bottom of Defendant’s email.

43. However, despite Plaintiff performing those same steps Plaintiff continued to receive unwanted collection emails from Defendant.

44. Upon information and belief, it’s misleading to the average consumer to be given a method for opting out of electronic communications by Defendant, but *fails* to actually remove or opt out the recipient's email address from additional electronic communications.

WHEREFORE, Plaintiff, GARY A. WALKER, requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the Fair Debt Collection Practices Act;
- b. Awarding Plaintiff statutory and actual damages, in an amount to be determined at trial, for the underlying Fair Debt Collection Practices Act violations;
- c. Awarding Plaintiff his costs and reasonable attorney’s fees pursuant to 15 U.S.C. §1692k; and
- d. Awarding any other relief as this Honorable Court deems just and appropriate.

**COUNT II:
Violations of Regulation F (12 CFR 1006 *et seq.*)**

45. All previous paragraphs of this Complaint are expressly adopted and incorporate herein.

46. Pursuant to §1006.14(h) of Regulation F, a debt collector must not “communicate or attempt to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person” 12 CFR 1006.14(h).

47. Defendant violated §1006.14(h) of Regulation F by continuing to send electronic communications to Plaintiff’s email address after Plaintiff unsubscribed from its emails multiple times.

WHEREFORE, Plaintiff, GARY A. WALKER, requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate Regulation F, therefore violating the Fair Debt Collection Practices Act;
- b. Awarding Plaintiff statutory and actual damages, in an amount to be determined at trial, for the underlying violations;
- c. Awarding Plaintiff his costs and reasonable attorney’s fees pursuant to 15 U.S.C. §1692k; and
- d. Awarding any other relief as this Honorable court deems just and appropriate.

**COUNT III:
Violations of the Texas Debt Collection Act (Tex. Fin. Code Ann. § 392.001 *et seq.*)**

48. All previous paragraphs of this Complaint are expressly adopted and incorporated herein as though fully set forth herein.

49. Plaintiff is a “consumer” as defined by Tex. Fin. Code Ann. § 392.001(1).

50. The alleged debt is a “debt” and a “consumer debt” as defined by Tex. Fin. Code Ann. § 392.001(2) as it is an obligation, or alleged obligation, arising from a transaction for personal, family, or household purposes.

51. Defendant is a “debt collector” as defined by Tex. Fin. Code Ann. § 392.001(6) and (7).

a. Violations of TDCA § 392.304

52. The TDCA, pursuant to Tex. Fin. Code Ann. § 392.304(19), states that a debt collector may not use “any other false representation or deceptive means to collect a debt or obtain information concerning a consumer.”

53. Defendant violated the TDCA when it falsely and deceptively gave an opt out option to Plaintiff to cease electronic communications via email, but never intended to cease their electronic communications to Plaintiff’s email address.

54. Specifically, Plaintiff selected to opt out of Defendant’s collection emails many times prior to the filing of this cause of action, but Defendant has yet to remove Plaintiff’s email as medium of communication.

WHEREFORE, Plaintiff GARY A. WALKER requests that this Honorable Court:

- a. Declare that the practices complained of herein are unlawful and violate the aforementioned statute;
- b. Entitling Plaintiff to injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1);
- c. Award Plaintiff actual damages, pursuant to Tex. Fin. Code Ann. § 392.403(a)(2);
- d. Award Plaintiff punitive damages, in an amount to be determined at trial, for the underlying violations;
- e. Award Plaintiff costs and reasonable attorney fees as provided under Tex. Fin. Code Ann. § 392.403(b) ; and
- f. Award any other relief as the Honorable Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury.

Date: January 27, 2022

Respectfully submitted,

GARY A. WALKER

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