

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

| | | |
|-----------------------------|---|---------------------------------|
| Melissa Paulk, |) | |
| |) | |
| Plaintiff, |) | Civil Action File No.: |
| |) | |
| vs. |) | |
| |) | |
| Columbia Debt Recovery, LLC |) | COMPLAINT WITH |
| d/b/a Genesis, |) | <u>JURY TRIAL DEMAND</u> |
| |) | |
| Defendant |) | |

PRELIMINARY STATEMENT

This action for damages is based upon the Defendant’s overt and intentional, unlawful conduct in the furtherance of its efforts to collect a consumer debt. The Defendant’s conduct is in violation of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq. and the Georgia Fair Business Practices Act, (GFBPA) O.C.G.A. 10-1-390 et seq.

PARTIES

1. Plaintiff, Melissa Paulk, is a natural person who resides in Murray County, Georgia.

2. Defendant, Columbia Debt Recovery, LLC, is a foreign corporation authorized to do business in Georgia. Defendant may be served with process via its

registered agent, Corporation Service Company at 2 Sun Court, Suite 400, Peachtree Corners, Georgia 30092.

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction over Plaintiff's Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, et seq., claims pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d). This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

4. This Court has personal jurisdiction over Defendant because, inter alia, Defendants frequently and routinely conducts business in the State of Georgia, including the conduct complained of herein.

5. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of Georgia because a substantial part of the events or omissions giving rise to the claims occurred in this district.

6. Venue is proper in the Rome Division because the conduct complained of herein occurred in Murray County.

FACTUAL ALLEGATIONS

7. Plaintiff is allegedly obligated to pay a consumer debt arising out of a residential lease and is, therefore, a "consumer", as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a collection agency specializing in the collection of consumer debt.

9. Defendant uses interstate commerce and/or mail in its business in the collection of consumer debts.

10. Defendant markets itself as having over 50 years of combined experience in collections specializing in servicing the multi-family industry.

See, www.genesiscred.com. Last visited, June 24, 2022.

11. Defendant manages, and collects upon, thousands of consumer debt accounts annually.

12. Defendant is, therefore, a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

13. In January, 2022, the Plaintiff began receiving email messages from the Defendant advising that it was collecting \$7,718.52 on behalf of “Ironwood (South).”

14. Plaintiff disputed the debt as she has never resided in the property nor has she leased the property for herself or anyone else.

15. On both January 28th, 2022 and February 21st, 2022, the Defendant caused to be sent to the Plaintiff emails describing the documentation it would need

in order to investigate the Plaintiff's claim that she not only did not owe the debt. Per the Defendant it would require...

- a) a utility statement for the address at which she claims to have resided during the period of the fraudulent lease;
- b) a copy of a lease, property tax statement, or mortgage for the address at which she claimed to have resided during the time of the fraudulent lease;
- c) a copy of the front and back of the Plaintiff's driver's license;
- d) two samples of her signature, including the license referenced above, and one on a notarized complaint;
- e) a filed police report; and
- f) a copy of a complaint that presumably the Plaintiff must file via the federal trade commission. This last was to be notarized.

16. The documents being requested by the Defendant are highly personal and contain more than enough information for the Plaintiff's personal and financial information to be in jeopardy. Moreover, the Defendant could investigate the Plaintiff's defense to this claim much more efficiently, and with far less burden placed upon the Plaintiff by simply accessing her credit file and reviewing her address records as accumulated by any of the major credit reporting bureaus.

17. The intent of the Defendant in demanding such an onerous list of personal documentation was to simply dissuade the Plaintiff, and others like her, from defending themselves from unlawful and improper claims.

18. On November 30, 2021, the Consumer Financial Protection Bureau (CFPB) published amendments to 12 C.F.R. Part § 1006 (hereinafter referred to as Regulation F).

19. Regulation F was issued by the Bureau of Consumer Financial Protection pursuant to sections 814(d) and 817 of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692b, 1692o; Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank act); 12 U.S.C. § 5481 et seq.; and paragraph (b)(1) of § 104 of the Electronic Signatures in Global and National Commerce Act (E-sign Act), 15 U.S.C. § 7004.

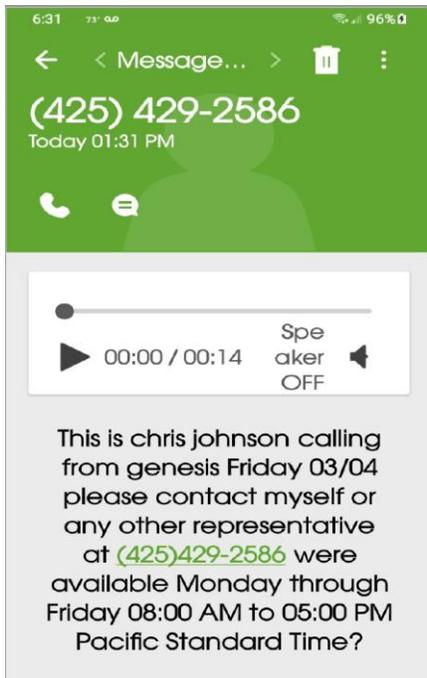
20. The Fair Debt Collection Practices Act and, specifically, regulation F apply to the Defendant at all times relevant hereto.

21. As of the date of enactment for Regulation F, where a debt collector communicates with a consumer electronically in connection with a collection of a debt using a specific email address, it must include in such communication “a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt-out of further electronic communications by the debt collector to

that email address.” See, Regulation F, 12 C.F.R. § 1006.6(e); 15 U.S.C. § 1692c. Neither of these emails provided any direction to the Plaintiff as to how she might limit or halt email communication from the Defendant.

22. Neither of these emails provided any direction to the Plaintiff as to how she might limit or halt email communication from the Defendant, and much less a “a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt-out of further electronic communications by the debt collector to that email address.”

23. Notwithstanding the Plaintiff’s dispute of this debt, the Defendant continued its collection efforts. Specifically, on March 4, 2022 it left a voicemail on Plaintiff’s cell phone. This message reproduced from a screenshot, appears below:



24. Defendant's voicemail identifies the caller as a debt collector as required by 15 U.S.C. § 1692e(11).

INJURIES-IN-FACT AND DAMAGES

25. As a result of the Defendant's actions and/or omissions, Plaintiff has suffered actual damages, including but not limited to the following:

- a.) Being subjected to false, deceptive, and unfair debt collection practices;
- b.) Uncompensated time expended away from activities of daily living, to confer with counsel regarding the Defendant's collection efforts;
- c.) The Plaintiff suffered a violation of her right to privacy;
- d.) Anxiety and worry caused by concern that Defendant was going to continue pursuing an unlawful claim if Plaintiff did not produce highly personal information and documentation;
- e.) Defendant's failure to comply with Regulation F, 12 C.F.R. § 1006.6(e) obscured the Plaintiff's right to terminate email communications from the Defendant.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692 et. seq.

Violations of 15 U.S.C. § 1692e and its subparts

26. 15 U.S.C. § 1692e specifically prohibits the use of any false, deceptive, or misleading representations or means in connection with the collection of any debt.

27. The use of “or” in § 1692e means a representation violates the FDCPA if it is false or deceptive or misleading. *Bourff v. Rubin Lublin, LLC*, 674 F.3d 1238, 1241 (11th Cir. 2012).

28. The standard in determining the nature of any such representation is that of the “least sophisticated consumer.” Its purpose is to protect “naive consumers” with a minimal understanding of personal finance and debt collection. *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1194 (11th Cir. 2010) (per curiam).

29. Moreover, the least sophisticated consumer is not to be held to the same standard as a reasonably prudent consumer. The least sophisticated consumer, though not unreasonable, is “ignorant” and “unthinking,” “gullible,” and of “below-average sophistication or intelligence,” *Pinson v. JPMorgan Chase Bank, Nat’l Ass’n*, No. 16-17107, 2019 U.S. App. LEXIS 33662, at 12-13 (11th Cir. Nov. 12, 2019), quoting *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993)

30. A false representation in connection with the collection of a debt is sufficient to violate the FDCPA, even if it is not alleged or proven to be misleading or deceptive.

31. The Defendant's intimations that the burden to validate the debt in collection fell upon the Plaintiff and that it could only be satisfied through the production of extremely personal and onerous documentation was objectively false and materially misleading, and a violation of 15 U.S.C. §§ 1692e, 1692e(10).

32. Defendant's failure to identify the nature of its call in its voicemail of March 4, 2022 in violation of 15 U.S.C. § 1692e(11).

Violations of 15 U.S.C. § 1692f and its subparts

33. The conduct of the Defendant as described herein was unfair and unconscionable. It preyed upon perceived lack of sophistication of the Plaintiff.

34. Defendant's conduct violated 15 U.S.C. § 1692f.

Violations of Regulation F, 12 C.F.R. § 1006.6(e)

35. The emails described here in represent violations of Regulation F, 12 C.F.R. § 1006.6(e).

COUNT II

**VIOLATIONS OF THE GEORGIA FAIR BUSINESS PRACTICES ACT
O.C.G.A. § 10-1-390, et seq.**

36. Plaintiff incorporates by reference paragraphs 1 through 35 as though fully stated herein.

37. O.C.G.A. § 10-1-390 et seq is commonly known as the "Fair Business Practices Act of 1975" (the "GFBPA").

38. The purpose of the GFBPA, is to protect consumers from unfair and/or deceptive practices in the conduct of any trade or commerce in part or wholly in the state. O.C.G.A. § 10-1-391.

39. O.C.G.A. § 10-1-391 directs that the GFPBA is to be interpreted and applied liberally and in harmony with the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), which implements the FDCPA.

40. O.C.G.A. § 10-1-393(a) of the GFBPA broadly prohibits unfair and/or deceptive business practices.

41. Defendant intentionally engaged in unfair and deceptive business practices, as set forth herein, in an effort to collect a consumer debt.

42. Defendant's conduct has implications for the consuming public in general.

43. Defendant's conduct negatively impacts the consumer marketplace.

44. Upon information and belief, Defendant does not maintain a place of business in Georgia and has no assets in Georgia, thus relieving Plaintiffs of the Notice and Demand requirements of O.C.G.A. § 10-1-399(b).

45. As a result of Defendant's violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover general damages pursuant to O.C.G.A. § 10-1-399(a).

46. As a result of Defendant's intentional violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover exemplary damages pursuant to O.C.G.A. § 10-1-399(a).

47. As a result of Defendant's intentional violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover treble damages pursuant to O.C.G.A. § 10-1-399(c).

48. Plaintiff is entitled to recover reasonable attorney's fees and expenses of litigation pursuant to O.C.G.A. § 10-1-399(d).

TRIAL BY JURY

49. Plaintiff is entitled to and hereby requests a trial by jury.

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

- a.) Plaintiff's actual damages;
- b.) Statutory damages pursuant to 15 U.S.C. § 1692k;
- c.) Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k
- d.) General, exemplary, and treble damages pursuant to O.C.G.A. § 10-1-399(a) & (c);

- e.) Reasonable attorney's fees and costs pursuant to O.C.G.A. § 10-1-399(d); and
- f.) Such other and further relief as may be just and proper.

Respectfully submitted this 27th day of June, 2022.

BERRY & ASSOCIATES

/s/ Matthew T. Berry

Matthew T. Berry

Georgia Bar No.: 055663

matt@mattberry.com

2751 Buford Highway, Suite 600

Atlanta, GA 30324

Ph. (404) 235-3300

Fax (404) 235-3333

Plaintiff's Attorney