

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Eve Buckmelter,

Plaintiff,

Civil Action No: 1:22-cv-2041

COMPLAINT

DEMAND FOR JURY TRIAL

-v.-

Credit Control, LLC,

Defendant(s).

Plaintiff Eve Buckmelter (hereinafter referred to as “Plaintiff”) brings this Complaint by and through her attorneys, against Defendant Credit Control, LLC (“Defendant”), based upon information and belief of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

INTRODUCTION/PRELIMINARY STATEMENT

1. Congress enacted the Fair Debt Collection Practices Act (“the FDCPA”) in 1977 in response to the “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. §1692(a). At that time, Congress was concerned that “abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” *Id.* Congress concluded that “existing laws...[we]re inadequate to protect consumers,” and that “the effective collection of debts” does not require “misrepresentation or other abusive debt collection practices.” 15 U.S.C. §§ 1692(b) & (c).

2. Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to “[e]nsure that those debt collectors who refrain from using

abusive debt collection practices are not competitively disadvantaged.” *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate *Id.* § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692 et. seq. The Court has pendent jurisdiction over the State law claims in this action pursuant to 28 U.S.C. § 1367(a).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) as this is where the Plaintiff resides, as well as where a substantial part of the events or omissions giving rise to the claim occurred.

NATURE OF THE ACTION

5. Plaintiff brings this action pursuant to § 1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act (“FDCPA”), and

6. Plaintiff is seeking damages and declaratory relief.

PARTIES

7. Plaintiff is a resident of the State of Colorado, County of Grand Junction.

8. Defendant is a “debt collector” as the phrase is defined in 15 U.S.C. § 1692(a)(6), with its principal location at 8001 Woodland Center Boulevard, Ste. 200, Tampa FL 33614.

9. Defendant has an address for service of process care of C T Corporation System, 7700 E Arapahoe Rd Ste 220, Centennial, CO 80112.

10. Upon information and belief, Defendant uses the mail, telephone, and facsimile and regularly engages in business, the principal purpose of which is to attempt to collect debts alleged to be due another.

FACTUAL ALLEGATIONS

11. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered above herein with the same force and effect as if the same were set forth at length herein.

12. Upon information and belief, on a time better known to Defendant, an obligation was allegedly incurred by Plaintiff to the creditor, Citibank, N.A. (“Citibank”) for an account associated with The Home Depot Consumer Credit Card, bearing an account number ending in 8470.

13. Upon information and belief, Citibank contracted with Defendant to act as its agent in collecting the subject debt from the Plaintiff.

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

15. The subject obligation is consumer-related, and therefore a “debt” as defined by 15 U.S.C. § 1692a(5).

16. Defendant was contracted by the original creditor for the purpose of debt collection. Therefore, Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

Violation of Law

17. On or about December 17, 2021, Defendant sent Plaintiff an initial collection letter (“Letter”) regarding the alleged debt for an account ending in 8470 (“Letter” attached as Exhibit A).

18. Defendant was not the first debt collector to attempt collection of the subject debt.

19. Plaintiff was previously dunned by non-party, ARS National Services Inc. (“ARS”)

20. Plaintiff made arrangements to settle the subject debt with ARS.

21. Plaintiff made monthly payments to ARS to pay off the subject debt in the amount of \$55.00 per month.

22. Plaintiff made her final payment to ARS on September 14, 2021 from her Wells Fargo bank account (Bank records attached as Exhibit B).

23. Payment was accepted as Plaintiff had sufficient funds for the \$55.00 payment on September 14, 2021(See Exhibit B).

24. On September 14, 2021, Wells Fargo listed an ending daily balance of \$774.91, demonstrating sufficient funds for the \$55.00 payment to ARS (See Exhibit B).

25. On September 29, 2021, ARS sent Plaintiff a letter confirming that ARS had received her final payment, “completing the terms of the settlement agreement” for the subject account (Letter from ARS confirming payment in full attached as Exhibit C).

26. Plaintiff was happy to have completed her settlement agreement and to no longer be subjected to the unpleasanties associated with debt collection.

27. Suddently, about three months later, on about December 17, 2021, Plaintiff received a debt collection letter from Defendant for the debt she had already settled with ARS (See Exhibit A).

28. The December 17, 2021 Letter states that Defendant is “trying to collect a debt that you owe to Citibank N.A.”

29. The Letter provides the same Home Depot Consumer Credit Card ending with account number 8470.

30. The Letter further states that Plaintiff has an amount of debt due totaling \$2,372.25.

31. Plaintiff did not know how this was possible in light of the fact that she had already settled this debt.

32. The Letter provided that Plaintiff could dispute the debt by calling or writing to Defendant by January 31, 2022.

33. Plaintiff acted on Defendant's dispute policy, timely contacting Defendant to inform them that she had already settled this debt.

34. Defendant received Plaintiff's dispute and responded with a letter on February 11, 2022.

35. In the February 11, 2022 letter, Defendant states that "We understand that you claim you settled your account with a different agency."

36. However, Defendant also stated that Plaintiff "currently has a balance of \$2,372.25."

37. Defendant explained that that last payment on the account was made on September 14, 2021 in the amount of \$25.26 which did not satisfy the balance.

38. This statement is false.

39. Plaintiff's bank records clearly demonstrate that she paid \$55.00 and not \$25.26 on September 14, 2021 (See Exhibit B).

40. Defendant further explained, "In addition a insufficient payment was found dated on September 17, 2021."

41. This statement is false for several reasons.

42. Plaintiff did not make any payments on September 17, 2021, as clearly demonstrated by her bank records.

43. Plaintiff did not have insufficient funds on September 17, 2021.

44. Defendant further explained that “on February 6, 2019 you entered into a settlement agreement of \$1,920.26 which was broken down into 42 payments of \$45 with a final payment being \$30.26.

45. This statement is false.

46. Plaintiff paid \$55.00 a month, and not \$45.00 a month.

47. Based on Defendant’s false explanations, Defendant concluded that “your balance is valid.”

48. Plaintiff provided additional information to re-dispute the debt with Defendant.

49. On or about April 13, 2022, Defendant sent Plaintiff another letter, copying their response from the first letter on February 11, 2022.

50. Plaintiff re-disputed the subject debt a third time, providing as much information as she was able to gather in order to stop Defendant from erroneously collecting a debt that was already paid.

51. On or about May 10, 2022, Defendant sent Plaintiff another letter, this time stating that “The settlement was broken during the last payment of \$55.00 on September 14, 2021 due to nonsufficient funds.”

52. This statement is false and conflicts with Defendant’s prior false accusations.

53. Plaintiff had sufficient funds for the \$55.00 payment, as clearly demonstrated on her bank records.

54. After about seven months of trying to resolve her conflict with Defendant on her own, Plaintiff needed to hire an attorney to stop Defendant from attempting collection for a debt she no longer owes.

55. Defendant attempted collection for a debt they knew Plaintiff did not owe.

56. Defendant attempted collection for a debt they should have known Plaintiff did not owe.

57. Even after it was brought to their attention that Plaintiff did not owe the subject debt, Defendant crafted different stories to justify their collection of the subject debt.

58. Defendant would not yield to Plaintiff's evidence that the debt was already settled.

59. Instead, they sought to lure Plaintiff into paying a debt she does not owe.

60. Defendant's debt collection practices were harassing to Plaintiff.

61. Plaintiff was terribly frustrated that Defendant would not accept the fact that she already settled the subject debt.

62. Plaintiff spent a great deal of time disputing the subject debt with Defendant over the course of many months.

63. Plaintiff spent time on the phone.

64. Plaintiff spent time drafting letters.

65. Plaintiff spent time reading and re-reading Defendant's responses.

66. Plaintiff spent time gathering records to prove that she settled this debt with a prior debt collector.

67. She spent time discussing this issue with other people to determine the best course of action for responding to Defendant's debt collection practices.

68. Plaintiff has tried on several occasions to dispute the debt and Defendant continues to attempt to collect the debt none-the-less without providing any proper verification of the debt beforehand.

69. These violations by Defendant were unconscionable, knowing, willful, negligent and/or intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violations.

70. Defendant's collection efforts with respect to the alleged debts caused Plaintiff to suffer concrete and particularized harm, *inter alia*, because the FDCPA provides Plaintiff with the legally protected right to be not to be misled or treated unfairly with respect to any action for the collection of any consumer debt.

71. Defendant's deceptive, misleading and unfair representations and/or omissions with respect to its collection efforts were material misrepresentations that affected and frustrated Plaintiff's ability to intelligently respond to Defendant's collection efforts.

72. Plaintiff was confused and misled to her detriment by the statements and/or omissions in the dunning letters, and relied on the contents of the letters to her detriment.

73. Plaintiff would have pursued a different course of action were it not for Defendant's statutory violations.

74. As a result of Defendants' deceptive, misleading, unfair, unconscionable, and false debt collection practices, Plaintiff has been damaged.

COUNT I

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

75. Plaintiff incorporates by reference the above paragraphs of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

76. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692d.

77. Pursuant to 15 U.S.C. §1692d, a debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

78. Collecting an already-settled debt, especially once Defendant was notified of the settlement, has the natural consequence of harassing, oppressing and/or abusing Plaintiff.

79. By reason thereof, Defendant is liable to Plaintiff for judgment in that Defendant's conduct violated Section 1692d et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

COUNT II

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

80. Plaintiff incorporates by reference the above paragraphs of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

81. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.

82. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

83. Defendant falsely represented the amount of the debt Plaintiff owed, the terms of her settlement agreement, and the character of her payments on the subject debt.

84. Defendant falsely represented that Plaintiff had insufficient funds, when she in fact had sufficient funds to pay the subject debt.

85. By reason thereof, Defendant is liable to Plaintiff for judgment in that Defendant's conduct violated Section 1692e et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

COUNT III

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

86. Plaintiff incorporates by reference the above paragraphs of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

87. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692f.

88. Pursuant to 15 U.S.C. §1692f, a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

89. Defendant unfairly attempted collection of the subject debt and contrived false narratives to justify its collection activities.

90. Defendant attempted collection of an amount that was not authorized by law or contract as the debt was previously settled by Plaintiff.

91. By reason thereof, Defendant is liable to Plaintiff for judgment in that Defendant's conduct violated Section 1692f et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

COUNT IV

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

92. Plaintiff incorporates by reference the above paragraphs of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

93. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692g.

94. Pursuant to 15 U.S.C. § 1692g(b):

Disputed debts:

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

95. Defendant violated this section by continuing to call and harass Plaintiff after receiving multiple disputes of the subject debts, in violation of § 1692g(b).

96. By reason thereof, Defendant is liable to Plaintiff for judgment in that Defendant's conduct violated Section 1692g et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

DEMAND FOR TRIAL BY JURY

97. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Eve Buckmelter demands judgment from Defendant Credit Control, LLC as follows:

- a) For actual damages provided and pursuant to 15 U.S.C. § 1692k(a)(1);
- b) For statutory damages provided and pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c) For attorney fees and costs provided and pursuant to 15 U.S.C. § 1692k(a)(3);
- d) For declaratory relief stating that Defendant violated the FDCPA pursuant to 28 U.S.C. §2201; and
- e) For any such other and further relief, as well as further costs, expenses and disbursements of this action as this Court may deem just and proper.

Dated: August 11, 2022

Respectfully Submitted,

STEIN SAKS, PLLC

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