

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

NICHOLAS S. WHITE,

Plaintiff,

Case No. 6:22-cv-01931

v.

JURY TRIAL DEMANDED

TUCKER, ALBIN AND ASSOCIATES,
INC.,

Defendant.

_____ /

COMPLAINT

The Plaintiff NICHOLAS S. WHITE (“Plaintiff”) by and through the undersigned, complains as to the conduct of TUCKER, ALBIN AND ASSOCIATES, INC. (“Defendant”) as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Fair Debt Collection Practices Act (“FDCPA”) under 15 U.S.C. §1692 *et seq.* in connection with Defendant’s unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the FDCPA. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C §1692, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business within the Middle District of Florida and a substantial portion of the events or omissions giving rise to the claims occurred within the Middle District of Florida.

PARTIES

4. Plaintiff is a natural “person,” as defined by 47 U.S.C. §153(39), over 18 years of age residing in Osceola County, Florida, which lies within the Middle District of Florida.

5. Defendant is a third party debt collector that that serves a variety of industries, and in connection therewith regularly collects or attempts to collect upon purportedly defaulted obligations said to be owed to others. Defendant is a corporation organized under the laws of the state of Texas with its principal place of business located at 1702 North Collins Boulevard, Suite 100, Richardson, Texas 75080.

6. Defendant is a “person” as defined by 47 U.S.C. §153(39).

7. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

8. The instant action arises out of Defendant's attempts to collect upon a personal debt ("subject debt") said to be owed by Plaintiff.

9. The subject debt stems from a loan transaction Plaintiff entered into with Covenant Transportation, Inc ("Covenant"), with such transaction being primarily for Plaintiff's personal purposes.

10. Upon information and belief, after Plaintiff's purported default on the subject debt, the subject debt was charged off and placed with Defendant for collection purposes.

11. Beginning in approximately July 2022, Defendant began placing phone calls and sending text messages to Plaintiff's cellular phone, (407) XXX-0764, attempting to collect upon the subject debt.

12. Defendant has primarily used the phone number (469) 424-3033 when placing calls to Plaintiff's cellular phone, but upon belief, it has used other numbers as well.

13. Shortly after Defendant began communicating with Plaintiff, Plaintiff was informed that Defendant was calling attempting to collect upon the subject debt.

14. Plaintiff is currently out of work and was unable to meet Defendant's demands for payments, so Plaintiff inquired as to whether he could set up some sort of payment plan.

15. Defendant advised that was not an option and that Plaintiff must pay the subject debt in full.

16. Plaintiff subsequently demanded, both on phone calls and through text messages, that Defendant stop communicating him with phone calls and text messages regarding the subject debt.

17. Notwithstanding Plaintiff's demands, Defendant has continued to place repeated and consistent phone calls to Plaintiff's cellular phone up until the filing of this Complaint.

18. Plaintiff has received dozens of harassing communications despite Plaintiff's repeated and consistent demands that such phone calls and text messages cease.

19. Furthermore, in response to each of Plaintiff's requests that Defendant's phone calls cease, Defendant has advised that the phone calls and communications will not stop, that Plaintiff had no right to get the phone calls to stop, that the only way for the communications to stop is to pay the debt, while further threatening to sue Plaintiff, and that such suit would result in a victory for Defendant's client.

20. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not limited to invasion of privacy, intrusion upon seclusion, emotional

distress, aggravation, and numerous violations of his federally protected interests to be free from harassing and abusive debt collection conduct.

COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

21.Plaintiff repeats and realleges paragraphs 1 through 20 as though fully set forth herein.

22.Plaintiff is a “consumer” as defined by 15 U.S.C. §1692a(3) of the FDCPA.

23.Defendant is a “debt collector” as defined by §1692a(6) of the FDCPA, because it regularly use the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts owed to others. Defendant is similarly a business whose principal purpose is the collection of debts.

24.The subject debt is a “debt” as defined by FDCPA §1692a(5) as it arises out of a transaction due or asserted to be owed or due to another for personal, family, or household purposes. The subject debt was an education loan provided to Plaintiff which was for used by Plaintiff for his personal purposes.

a. Violations of FDCPA § 1692d *et seq.*, and 12 C.F.R. § 1006.14 *et seq.*

25.The FDCPA, pursuant to 15 U.S.C. §1692d, prohibits a debt collector 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.” §1692d(5) further prohibits, “causing a telephone to ring or engaging any person in telephone

conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.”

26. The newly amended Regulation F provides further guidance on what circumstances constitute harassing and oppressive debt collection conduct. 12 C.F.R. § 1006.14(b)(2) provides guidance on when calls are made repeatedly and continuously, and debt collectors are presumed to comply with these provisions if they do not call a consumer more than 7 times over 7 consecutive days, or if they wait 7 days after communicating with a consumer before attempting another communication. However, the commentary thereto confirms that this presumptive compliance can be rebutted by several factors, including “[t]he content of a person’s prior communications with the debt collector.” An example of facts rebutting the presumptive compliance would be a prior indication “that the person did not wish to be contacted again about the particular debt, that the person was refusing to pay the particular debt, or that the person did not owe the particular debt.” Additionally, pursuant to 12 C.F.R. § 1006.14(h), a debt collector cannot “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.”

27. Defendant violated 15 U.S.C. §§ 1692d & d(5), as well as 12 C.F.R. §§ 1006.14(b) & (h), through its placement of phone calls to Plaintiff’s cellular phone.

Defendant frequently and repeatedly communicated and attempted to communicate with Plaintiff in flagrant violation of the call frequencies outlined in Regulation F. Furthermore, Respondent's harassing conduct is evinced given its placement of repeated and consistent phone calls following his do not call requests. Plaintiff plainly demanded that Defendant cease calling and texting his cellular phone regarding the subject debt, on a number of occasions. Rather than listen to Plaintiff, Defendant simply continued placing repeated calls and text messages to Plaintiff attempting to collect upon the subject debt. The regulations clarify that consumers who have requested calls to stop, yet nevertheless receive further calls, may state claims for repeated phone calls. Furthermore, Regulation F clarifies that communicating with a consumer through a medium after that consumer has requested no communications through such medium – as occurred here – constitutes harassing and oppressive conduct in itself. Defendant's violations of the relevant statutes and regulations caused Plaintiff harm in the form of invasion of privacy stemming from Defendant's persistence in placing unwanted phone calls to Plaintiff's cellular phone. Defendant's harassing intent behind its phone calls is further evident given the threatening language utilized by Defendant as well as the repeated representations that its phone calls would not stop and would continue until Plaintiff acquiesced to Defendant's demands for payment.

WHEREFORE, Plaintiff, NICHOLAS S. WHITE, respectfully 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 aforementioned bodies of law;
- b. Awarding Plaintiff statutory damages of \$1,000.00 as provided under 15 U.S.C. §1692k(a)(2)(A);
- c. Awarding Plaintiff actual damages, in an amount to be determined at trial, as provided under 15 U.S.C. §1692k(a)(1);
- d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C. §1692k(a)(3); and
- e. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: October 20, 2022

Respectfully Submitted,

/s/ Franklin A. Jara
Franklin A. Jara, Esq.
Florida Bar No. 636681
Sulaiman Law Group, Ltd.
2500 South Highland Avenue
Suite 200
Lombard, IL 60148
Phone :(312) 313-1613
Fax: (630) 575-8188
fjara@sulaimanlaw.com