

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

Taryn Watts,)	
)	
Plaintiff,)	Civil Action File No.:
)	
vs.)	
)	
Portfolio Recovery Associates, LLC,)	<u>COMPLAINT WITH 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, Taryn Watts, is a natural person who resides in Cherokee County, Georgia.

2. Defendant, Portfolio Recovery Associates, LLC, is a limited liability corporation that does business, but is not registered in Georgia. Defendant may be

served with process via its registered agent, Kevin Stevenson, President, at 140 Corporate Blvd, Norfolk, Virginia 23502.

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 Atlanta Division because the conduct complained of herein occurred in Cherokee County, Georgia.

FACTUAL ALLEGATIONS

7. Plaintiff is allegedly obligated to pay a consumer debt arising out of a credit card utilized for the purchase of ordinary consumer goods and services. Plaintiff is, therefore, a "consumer", as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant's principal business is the purchase of consumer debt and the collection of those accounts for its commercial benefit. Defendant regularly collects, or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, to a third party.

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

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

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

12. The Plaintiff defaulted on a credit card account issued by Capital One MasterCard. At the time of the default, the balance owed was \$2,980.26.

13. In keeping with its business model, Defendant purchased the Capital One account after it had been charged off. The Defendant then began a campaign to collect the face value of the account.

14. Because of the Plaintiff's dire financial condition, she caused to be mailed to the Defendant a letter dated April 8th, 2022. In this letter, the Plaintiff identified herself through her name, address, social security number, and referenced

the account in collection. The Plaintiff went on to advise the Defendant that because of her financial circumstances, she would “not be paying on these accounts.”

15. A reproduction of this letter, modified to mask information that could compromise Plaintiff’s financial identity, appears below:

Taryn Watts

[REDACTED]
Canton, GA 30114

April 8, 2022

Portfolio Recovery Associates, LLC
120 Corporate Boulevard
Norfolk, VA 23502

Referencing Account: Capital One MasterCard \$2,980.26,
Credit One Bank \$678.52.
SSN: [REDACTED]-7279

I have been contacted about accounts that I had with Capital One MasterCard, Credit One Bank. These are not the only debts I have unfortunately. I have had inconsistent income and will not be paying on these accounts. I have had interruptions in my income and I have had to deal with other personal difficulties.

Thank you,

Taryn Watts

16. The Plaintiff’s letter was, per the United States Postal Service, received by the Defendant on April 18th, 2022, when it was delivered at 11:56 a.m.

17. The Fair Debt Collection Practices Act provides an indisputable means by which a consumer may discontinue most communications from a collector, thereby preserving their peace. 15 U.S.C. § 1692c.

18. The act states specifically, “If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt, or if the consumer wishes the debt collector to cease their communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt. 15 U.S.C. § 1692c(c).

19. The statute further provides three exceptions related to future communications that include the debt collector advising the consumer that further efforts are being terminated, that the collector may invoke specified remedies which are ordinarily invoked by such a debt collector, or that the debt collector intends to invoke a specified remedy.

20. Plaintiff’s statement that she will not be making a payment on the account was a refusal to pay the account.

21. Plaintiff’s written correspondence was sent to Defendants with the intention that Defendants cease contacting Plaintiff about the debt.

22. The FDCPA does not require Plaintiff’s refusal to pay to be unconditional, nor does it require that Plaintiff’s wish to be left alone be stated in the

most general terms. *See Barnes v. Seterus, Inc.*, 2013 U.S. Dist. LEXIS 180418, at *4-5 (S.D. Fla. Dec. 26, 2013).

23. The ordinary meaning of refuse does not encompass an unalterable rejection and the FDCPA does not require that the consumer use any specific language or magic words to tell a debt collector to cease communication. *Bishop v. I.C. Systems, Inc.*, 713 F. Supp. 2d 1361, 1367-68 (M.D. Fla. 2010).

24. On May 17th, 2022, the Plaintiff submitted a complaint to the Consumer Financial Protection Board (CFPB) in which she alleged a number of unfair practices on behalf of the Defendant and also advised that she had requested that Defendant cease all communication, but that to date Defendant had not complied.

25. On May 25th, 2022, the Defendant responded to the CFPB. complaint and advised that it had honored the Plaintiff's request to cease all communications regarding the PRA account ending in 4987. The Plaintiff's CFPB complaint was closed shortly thereafter.

26. On or about February 2nd, 2022, despite its pledge to the Plaintiff and the CFPB that it had and would continue to cease all communication with the Plaintiff, the Defendant sent letters to her on September 16th, 2022; May 19th, 2022; July 16th, 2022; and November 8th, 2022. Each of these letters purports to advise

the Plaintiff that it has validated the debt and advises that its response is an attempt to collect a debt.

27. All of the Defendant's letters referenced above are in connection with and intended to facilitate collection of the account purchased by Defendant.

28. Defendant's letters did not advise the Plaintiff that further collection efforts are being terminated.

29. Defendant's letters did not advise the Plaintiff that Defendant was invoking specified remedies which are ordinarily invoked by Defendant.

30. Defendant's letters did not advise the Plaintiff that Defendant intended to invoke a specified remedy.

31. Defendant's letters referenced herein were not subject to the exceptions described in 15 U.S.C. § 1692c(c)(1), (2), or (3).

INJURIES-IN-FACT AND DAMAGES

32. The FDCPA provides consumers with "statutorily-created rights to be free from 'being subjected to false, deceptive, unfair, or unconscionable means to collect a debt.'" *McCamis v. Servis One, Inc.*, No. 8:16-CV-1130-T-30AEP, 2016 U.S. Dist. LEXIS 99492 (M.D. Fla. July 29, 2016); *Church v. Accretive Health, Inc.*, 654 Fed. Appx. 990, 2016 U.S. App. LEXIS 12414, 2016 WL 3611543 (11th Cir. 2016).

33. An injury-in-fact sufficient to satisfy Article III standing requirements “may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing.” *Church*, at 993, quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982).

34. Violation of statutory rights are not a “hypothetical or uncertain” injury, but one “that Congress has elevated to the status of a legally cognizable injury through the FDCPA.” *McCamis*, at 4, citing *Church*, at 3.

35. 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 work and/or activities of daily living, to confer with counsel regarding the Defendant's collection efforts;
- c.) Disturbance of the Plaintiff’s peace and her right to be free of communications from the Defendant despite Plaintiff invoking her right to be free of such;
- d.) The Plaintiff suffered a violation of her right to privacy;
- e.) Anxiety and worry caused by concern that Defendant was going to continue collection communications with the Plaintiff, despite her invoking her right to free of such. The anxiety and worry experienced by the Plaintiff was sufficient to

negatively affect her demeanor, her ability to engage in daily activities, resulted in sleeplessness, and adversely affected her relationships with others.

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. § 1692c and subparts

36. The communications from the Defendant of after April 18, 2022 violated 15 U.S.C. § 1692c(c).

COUNT II

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

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

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

39. 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.

40. 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.

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

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

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

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

45. 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).

46. 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).

47. 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).

48. 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).

49. 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

50. 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 3rd day of January, 2023.

[Signatures follow]

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

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

DEFENDANT(S)

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Matthew T. Berry
2751 Buford Highway, Suite 600
Atlanta, Georgia 30324
(404) 235-3334
matt@mattberry.com

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- | | |
|-----------------------------|---|
| 1 U.S. GOVERNMENT PLAINTIFF | 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY) |
| 2 U.S. GOVERNMENT DEFENDANT | 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

PLF	DEF	PLF	DEF
1	1	4	4
2	2	5	5
3	3	6	6

CITIZEN OF THIS STATE
CITIZEN OF ANOTHER STATE
CITIZEN OR SUBJECT OF A FOREIGN COUNTRY
INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
FOREIGN NATION

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- | | | | | | | |
|-----------------------|----------------------------|---------------------------------|--------------------------|--|----------------------------|---|
| 1 ORIGINAL PROCEEDING | 2 REMOVED FROM STATE COURT | 3 REMANDED FROM APPELLATE COURT | 4 REINSTATED OR REOPENED | 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District) | 6 MULTIDISTRICT LITIGATION | 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT |
|-----------------------|----------------------------|---------------------------------|--------------------------|--|----------------------------|---|

V. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

(IF COMPLEX, CHECK REASON BELOW)

- | | |
|--|--|
| 1. Unusually large number of parties. | 6. Problems locating or preserving evidence |
| 2. Unusually large number of claims or defenses. | 7. Pending parallel investigations or actions by government. |
| 3. Factual issues are exceptionally complex | 8. Multiple use of experts. |
| 4. Greater than normal volume of evidence. | 9. Need for discovery outside United States boundaries. |
| 5. Extended discovery period is needed. | 10. Existence of highly technical issues and proof. |

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT \$ _____ APPLYING IFP _____ MAG. JUDGE (IFP) _____
JUDGE _____ MAG. JUDGE _____ NATURE OF SUIT _____ CAUSE OF ACTION _____
(Referral)

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 WELFARE
- 440 OTHER CIVIL RIGHTS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 463 HABEAS CORPUS- Alien Detainee
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 610 AGRICULTURE
- 620 FOOD & DRUG
- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 630 LIQUOR LAWS
- 640 R.R. & TRUCK
- 650 AIRLINE REGS.
- 660 OCCUPATIONAL SAFETY / HEALTH
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
- 740 RAILWAY LABOR ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 810 SELECTIVE SERVICE
- 875 CUSTOMER CHALLENGE 12 USC 3410
- 891 AGRICULTURAL ACTS
- 892 ECONOMIC STABILIZATION ACT
- 893 ENVIRONMENTAL MATTERS
- 894 ENERGY ALLOCATION ACT
- 895 FREEDOM OF INFORMATION ACT
- 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
- 950 CONSTITUTIONALITY OF STATE STATUTES
- 890 OTHER STATUTORY ACTIONS

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- ARBITRATION (Confirm / Vacate / Order / Modify)

(Note: Mark underlying Nature of Suit as well)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

Plaintiff demands actual, statutory and punitive

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ damages + Attorney fees and costs

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.


SIGNATURE OF ATTORNEY OF RECORD

DATE