

**THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK DIVISION**

<p>FABIAN RODRIGUEZ, Plaintiff, – against – OLIPHANT FINANCIAL, LLC, Defendant.</p>	<p>Civil Action No. _____</p> <p>COMPLAINT</p> <p>JURY TRIAL DEMANDED</p>
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COMPLAINT

Plaintiff, Fabian Rodriguez (hereinafter “Plaintiff”), by and through his attorneys, the Law Offices of Robert S. Gitmeid & Associates, PLLC (hereinafter “Gitmeid”), by way of Complaint against Defendant, Oliphant Financial, LLC (hereinafter “Oliphant”), hereby alleges as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for breach of contract and violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (the "FDCPA"). The FDCPA prohibits debt collectors from engaging in abusive, deceptive, and unfair collection practices.

PARTIES

2. Plaintiff, Fabian Rodriguez, is an adult citizen of the State of New Jersey, domiciled in Newark, New Jersey.
3. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) of the FDCPA.

4. Defendant Oliphant is a business that engages in the practice of buying and collection of debts. Its main office is located at 1800 Second St., Suite 603, Sarasota, FL 34236.
5. Defendant Oliphant is a "debt collector" as defined by 15 U.S.C. § 1692a(6) of the FDCPA.

JURISDICTION & VENUE

6. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because the rights and obligations of the parties in this action arise out of 15 U.S.C. § 1692, et seq., which provides that an action to enforce any liability created under 15 U.S.C. § 1692 may be brought in any appropriate United States District Court, without regard to the amount in controversy.
7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Newark, Essex County, New Jersey.

FACTUAL ALLEGATIONS

8. Defendant Oliphant attempted to collect a debt allegedly owed by Plaintiff relating to consumer purchases originally owed to Lending Club Corp. but purchased by Oliphant.
9. The debt at issue arises out of an alleged transaction which was primarily for personal, family or household purposes and falls within the definition of "debt" for purposes of 15 U.S.C. § 1692a(5).
10. On or about March 15, 2022, Plaintiff, via his debt settlement representative, entered into a settlement agreement with Oliphant to settle and close his WebBank/Lending Club Corp. account ending in 2451. A copy of the settlement letter is attached hereto as **Exhibit A**.

11. Pursuant to the terms of the settlement, Plaintiff agreed to make eighteen (18) payments totaling \$9,452.09. Payments would begin on March 31, 2022 and continue on the last day of each month.
12. On March 29, 2022, Plaintiff's debt settlement representative contacted Oliphant via phone to make the first payment, however Oliphant advised that they would only accept payment via mail.
13. The first payment was made via overnight mail and cleared and posted on March 30, 2022. Proof of payment is attached hereto as **Exhibit B**.
14. On April 22, 2022, Plaintiff placed the second payment in the mail. This payment cleared and posted on May 2, 2022. Proof of payment is attached hereto as **Exhibit C**.
15. The final day of April 2022 fell on a Saturday. The following business day, Monday, May 2, 2022, Oliphant had the check in hand ready to deposit which they did. This made the payment timely.
16. The MICR line on proof of payment indicates that the payment cleared on May 2, 2022. Because of this, there is a high chance that the check was deposited prior to this day.
17. However, on May 2, 2022, Oliphant contacted Plaintiff's debt settlement representative and advised that the account needed to be renegotiated because payment was not received until after the final day of April 2022.
18. Plaintiff's debt settlement representative advised Oliphant that payment was mailed timely as it went out prior to the due date, however Oliphant advised that the settlement was void and that the account needed to be renegotiated. Oliphant requested a lump sum payment of \$11,447.61.

19. On May 4, 2022, Plaintiff's debt settlement representative called Oliphant and requested to have the agreement re-instated. Oliphant refused and stated that they would only accept \$11, 447.61.
20. Counsel sent two (2) letters dated December 12, 2022 and January 27, 2023 to Oliphant laying out the facts and history of the account, settlement documentation, and a request to discuss further. A copy of said letters are attached hereto as **Exhibit D**.
21. Defendant did not respond.
22. On May 2, 2023, counsel called Oliphant to discuss the account. Oliphant advised that the balance on the account was \$14,773.49 and that the account needed to be renegotiated, but that it was also in queue for litigation. Oliphant advised that it would accept \$10,321.00 to resolve the account.
23. At all times pertinent hereto, Defendant acted by and through its agents, servants and/or employees, who were acting within the scope and course of their employment, and under the direct supervision and control of the Defendant herein.
24. At all times pertinent hereto, the conduct of Defendant, as well as that of its agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and/or in wanton disregard for federal law and the rights of the Plaintiff herein.

FIRST CAUSE OF ACTION
(Fair Debt Collection Practices Act)

25. Plaintiff reasserts and incorporates herein by reference all facts and allegations set forth above.
26. FDCPA § 1692f(1) prohibits the use of unfair or unconscionable practices to collect a debt, including collection of any amount not authorized by the contract or law. FDCPA 15 U.S.C. § 1692e(2)(a) prohibits the false representation of the character, amount or legal

status of any debt. FDCPA 15 U.S.C. § 1692e(10) prohibits any false, misleading, or deceptive representation or means in connection with the collection of a debt.

27. Defendant violated these provisions of the FDCPA by unfairly refusing to honor a valid settlement agreement.
28. Oliphant violated these provisions of the FDCPA by unfairly misrepresenting the amount of the debt by stating that the balance is \$14,773.49 instead of \$8,472.00.
29. Oliphant violated these provisions of the FDCPA by unfairly misrepresenting the status of the debt as delinquent.
30. Oliphant violated the FDCPA by unfairly attempting to renegotiate a settled debt.
31. Oliphant violated these provisions of the FDCPA by unfairly preventing Plaintiff from completing his end of the settlement agreement as it advised it was void and refused to reinstate it.
32. As a result of the above violations of the FDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages, attorneys' fees and costs.

SECOND CAUSE OF ACTION
(Breach of Contract)

33. Plaintiff reasserts and incorporates herein by reference all facts and allegations set forth above.
34. On or about March 15, 2022, Plaintiff, via his debt settlement representative, entered into a settlement agreement with Oliphant.
35. Pursuant to the terms of the settlement, Plaintiff agreed to make eighteen (18) payments totaling \$9,452.09.
36. Oliphant accepted two (2) payments totaling \$980.00.

37. On May 2, 2022, Oliphant advised that the account needed to be re-negotiated as the settlement was void.
38. On May 2, 2023, Counsel requested that Oliphant honor the agreement, but Oliphant again refused.
39. Defendant's actions constitute a breach of contract by accepting two (2) payments then refusing to honor the agreement.
40. Oliphant's actions constitute a breach of contract by refusing to accept the remaining payments under the settlement agreement.
41. As a result of Defendant's breach of contract, Plaintiff has suffered actual and monetary damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands that judgment be entered against Defendant as follows:

1. That judgment be entered against Defendant for actual and statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A);
2. That the Court award costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k(a)(3);
3. That judgment be entered against Defendant for actual and monetary damages accrued by Plaintiff as a result of Defendant's breach of contract; and
4. That the Court grant such other and further relief as may be just and proper.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action of all issues so triable.

Dated: May 18, 2023
New York, New York

Law Offices of Robert S. Gitmeid & Associates, PLLC

By: /s/ Maksim Reznik
Maksim Reznik, Esq.
30 Wall Street, 8th Floor #741
New York, NY 10005
Tel: (866) 249-1137
Fax: (212) 412-9005
Email: Maksim.R@gitmeidlaw.com
Counsel for Plaintiff Fabian Rodriguez

