

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION**

Shelly Smith-Jones, a/k/a	)	
Shelly Smith	)	
	)	Civil Action File No.:
Plaintiff,	)	
	)	
vs.	)	
	)	<b>COMPLAINT WITH</b>
TrueAccord Corp.,	)	<b><u>JURY TRIAL DEMAND</u></b>
	)	
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, Shelly Smith-Jones, is a natural person who resides in Lowndes County, Georgia.

2. Defendant, TrueAccord Corp. (TrueAccord), is a foreign corporation registered to do business in Georgia. Defendant may be served with process via its

registered agent, National Registered Agents, Inc., 289 S. Culver Street, Lawrenceville, Georgia 30046 .

### **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 Valdosta Division because the conduct complained of herein occurred in Lowndes County, Georgia.

### **FACTUAL ALLEGATIONS**

7. Plaintiff is a 42-year-old woman with deteriorating health. She is disabled, unable to engage in competitive employment, and is in the process of obtaining disability insurance benefits through the Social Security Administration.

8. Plaintiff is allegedly obligated to pay a consumer debt arising out of a point-of-sale loan utilized for the purchase of ordinary goods and services. The Plaintiff is, therefore, a “consumer”, as that term is defined by 15 U.S.C. § 1692a(3).

9. Defendant’s principal business is the collection of consumer debt owed or due, or asserted to be owed or due, to a third party.

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

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. Plaintiff made a consumer purchase financed by Affirm, Inc. (Affirm). operates as a financial lender of installment loans for consumers to use at the point of sale to finance purchases.

14. Plaintiff defaulted on her obligation to Affirm as a result of her inability to maintain employment.

15. Affirm retained Defendant to pursue collection of the account from Plaintiff.

16. Defendant touts its collection practices as utilizing “machine learning” and using “pre-built content libraries” in its communications with consumers. Defendant primarily uses email and text messaging to drive consumer payments.

17. On February 14, 2023 Plaintiff received an email from Defendant sent by “Joseph Jefferson” with the email address “Joseph@email.trueaccord.com” seeking payment of the account originating with Affirm.

18. On February 16<sup>th</sup>, she received another email demanding payment of the Affirm account.

19. 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.

20. 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).

21. 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.

22. Because of the Plaintiff's dire financial condition, she responded to the Defendant's email with the following email on February 21, 2023:

Mr. Jefferson,

I received your email about the amount I owe to Affirm. I understand the balance owed is \$43.55. I live in Valdosta and the economy here is hard. This may be a small sum for most people but I have had a very difficult time and will not be paying the account. I have not worked in quite some time. If ever my situation improves I will call or email you at the number you included in your email. Thank you.

Shelly Smith

23. Plaintiff's statement that she "will not be paying the account" was a refusal to pay the account.

24. Plaintiff's written correspondence was sent to Defendant with the intention that Defendant cease contacting Plaintiff about the debt.

25. 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).

26. 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).

27. Notwithstanding the written notice provided to the Defendant described herein, the Defendant has, since February 21<sup>st</sup>, sent the Plaintiff no fewer than seven separate and distinct email and text messages demanding payment of the Affirm account.

28. None of Defendant's communications since advised Plaintiff that further collection efforts are being terminated.

29. None of Defendant's communications since advised Plaintiff that Defendant is invoking specified remedies which are ordinarily invoked by Defendant.

30. None of Defendant's communications since advised Plaintiff that Defendant intends to invoke a specified remedy.

31. Defendant's communications since February 21, 2023 are 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 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.) Disturbance of the Plaintiff's peace and her right to be free of communications from the Defendant and its agents;
- d.) The Plaintiff suffered a violation of her right to privacy.
- e.) Anxiety and worry caused by concern that Defendant was going to continue communicating with the Plaintiff despite her attempts to cease such per the statute.

## **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 communication from the Defendant's agent after February 21, 2023 violated 15 U.S.C. § 1692c(c).

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

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

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

### **COUNT II**

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



39. Plaintiff incorporates by reference paragraphs 1 through 38 as though fully stated herein.

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

41. 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.

42. 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.

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

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

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

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

47. 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).

48. 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).

49. 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).

50. 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).

51. 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**

52. 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 19th day of May, 2023.

**BERRY & ASSOCIATES**

/s/ Matthew T. Berry

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