

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

Brittany Kokenzie,)	
)	
Plaintiff,)	Civil Action File No.:
)	
vs.)	
)	
TrueAccord Corp.,)	COMPLAINT WITH
)	<u>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, Brittany Kokenzie, is a natural person who resides in Muscogee County, Georgia.
2. Defendant, TrueAccord Corp., is a foreign corporation authorized to do business in Georgia. Defendant may be served with process via its registered agent,

National Registered Agents, Inc., at 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 Middle 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 Columbus Division because the conduct complained of herein occurred in Muscogee County, Georgia.

FACTUAL ALLEGATIONS

7. Plaintiff is a 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 deficiency arising out of debt originating with a retailer of children's clothing and is, therefore, a "consumer", as that term is defined by 15 U.S.C. § 1692a(3).

9. Defendant is a collection agency specializing in the collection of consumer debt.

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. As a result of her disability and inability to maintain employment, the Plaintiff has fallen behind on a number of consumer debts.

14. One of these accounts is a retail clothing account that Plaintiff opened with "Kidpik," a retailer of clothing for children.

15. Following her default on the account with Kidpik, the creditor retained the services of the Defendant to pursue collection of its debt.

16. In keeping with its business model, the Defendant's primary means of communication with the Plaintiff has been email.

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). (Emphasis added)

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. On April 13, 2023, the Plaintiff responded to an email received from the Defendant with the following:

My name is Brittany Kokenzie. My Kidpik account number ending in 7447 and my TrueAccord account number is 47-62-2690-00840. I have every intention on paying my debt back. Unfortunately, I'm unable to pay it right now. My account was hacked and we are still resolving

that issue. **I will contact as soon as I can. It's best for me to contact y'all when I'm able to pay.** Thank you, Brittany Kokenzie. (emphasis added)

21. Plaintiff's statement that she would contact Defendant as soon as she could and, more significantly, that it would be best for her to contact Defendant when she was able to pay is a clear statement that she wished the debt collector to cease their communications with her.

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

23. Notwithstanding the written notice provided to the Defendant described herein, Defendant continued to contact the Plaintiff. Specifically, on Sunday, May 14, 2023, the Defendant caused to be sent to the Plaintiff yet another email seeking to collect the debt on behalf of Kidpik. The title of Defendant's email was "your Kidpik balance needs some attention."

24. On May 18th, 2023 Plaintiff received another email from Defendant demanding payment of the Kidpik account. The pertinent portion of this email is reproduced below:

Pay attention to this.



You have an outstanding balance of \$223.60.

Hi Brittany,

It's time to take care of your balance with kidpik.

You can select and set up a [payment plan](#) on our website.

Don't wait on this any longer.

RESOLVE YOUR BALANCE

This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose.

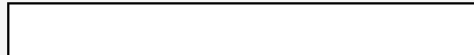
Your TrueAccord account number is: **47-62-2690-00840**

[Unsubscribe](#) [Privacy Policy](#) [Dispute this debt](#)

Need help? Call us at [\(866\) 611-2731 \(TTY 771\)](#) between Monday - Friday, 8 AM - 8 PM ET

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16011 College Blvd, Suite 130, Lenexa, KS 66219



We collect personal information to provide our services. We do not sell personal information. Most of the information we have is provided to us by the current creditor and/or collected directly through the use of our services, emails, web applications, and phone calls. For more details on how we use, share, and delete personal information see our [Privacy Policy](#).

25. Defendant's emails of May 14th and 18th do not advise the Plaintiff that further collection efforts are being terminated.

26. Defendant's emails since April 13th do not advise the Plaintiff that either Defendant or Kidpik are invoking specified remedies which are ordinarily invoked by Defendant or Kidpik.

27. Defendant's emails since April 13th do not advise the Plaintiff that either Defendant or Kidpik intends to invoke a specified remedy

28. Defendant's emails since April 13th are subject to the exceptions described in 15 U.S.C. § 1692c(c)(1), (2), or (3).

29. The representations of the Defendant concerned and worried the Plaintiff resulting in her obtaining legal counsel to determine her best course of action.

INJURIES-IN-FACT AND DAMAGES

30. 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).

31. 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).

32. 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.

33. 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 despite Plaintiff invoking that right per the statute; and
- d.) The Plaintiff suffered a violation of her right to privacy;

34. Accordingly, through the violation of Plaintiffs’ statutorily created rights under the FDCPA, Plaintiff has suffered an injury-in-fact sufficient to establish Article III standing.

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

35. The communications from the Defendant's email of May 14th and May 18th, 2023 were clear violations of 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.

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

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

38. 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.

39. 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.

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

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

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

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

44. 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).

45. 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).

46. 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).

47. 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).

48. 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

49. 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 pursuant to 15 U.S.C. § 1692k(a)(1) and;
- b.) Statutory damages pursuant to 15 U.S.C. § 1692k;
- c.) General, exemplary, and treble damages pursuant to O.C.G.A. § 10-1-399(a) & (c);
- d.) Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k and O.C.G.A. § 10-1-399(d); and
- d) Such other and further relief as may be just and proper.

Respectfully submitted this 20th day of May, 2023.

[Signatures follow]

BERRY & ASSOCIATES

/s/ Matthew T. Berry

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