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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION**

EVAN DALE,
Plaintiff,

v.

NICKEL CITY GROUP LLC, a
Delaware Corporation,
Defendant.

NO. 2:23-cv-1098

PLAINTIFF’S COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF FOR VIOLATIONS OF THE
FAIR DEBT COLLECTION
PRACTICES ACT AND THE
WASHINGTON STATE CONSUMER
PROTECTION ACT, *INTER ALIA*

JURY TRIAL DEMANDED

COMES NOW, Plaintiff, EVAN DALE, by and through his attorney, SARAELLEN HUTCHISON, and complains against the Defendant as follows:

I. STATEMENT OF THE CASE

This is an action for damages and injunctive relief to prevent further harm to Plaintiff and to prevent Defendant’s future violations of state and federal consumer protection laws.

II. PARTIES

2.1 Plaintiff, EVAN DALE (hereinafter “Plaintiff”) resides in the city of Renton, in King County, Washington.

1 2.2 Plaintiff was, at all times relevant hereto, alleged to be liable on a defaulted debt
2 originally owed to a non-party creditor. The funds from this debt were used to purchase various
3 personal effects, and were not sued for any business or commercial purposes.

4 2.3 Plaintiff is therefore a “consumer” as the term is defined by 15 U.S.C. § 1692a(3)
5 and a “debtor” as defined by the Collection Agency Act, RCW 19.16 et seq. (“WCAA”) and a
6 “consumer” as that term is contemplated by the WCPA, and Plaintiff acted as a “debtor” and as
7 a “consumer” at all times relevant to this litigation.

8 2.4 Defendant NICKEL CITY GROUP LLC (“NCG”) is a Delaware Limited
9 Liability Company doing business in Washington State pursuant to UBI number 603-208-847.

10 2.5 NCG holds a Washington State Out-of-State Collection Agency License.

11 2.6 NCG regularly collects defaulted consumer debts.

12 2.7 NCG attempted to collect a debt from Plaintiff.

13 2.8 NCG is therefore a “debt collector” as that term is defined by 15 U.S.C. §
14 1692a(6) and is a “collection agency” and a “licensee” as defined by the WCAA, a “business”
15 as defined by the Washington State Consumer Protection Act, RCW 19.86 et seq. (“WCPA”)
16 and acted as such at all times relevant to this complaint.

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19 **III. JURISDICTION AND VENUE**

20 3.1 Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 15 U.S.C. §
21 1692k(d).

22 3.2 Supplemental Jurisdiction exists pursuant to 28 U.S.C. § 1367.

23 3.3 Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), in that
24 defendants transact business in this judicial district and a substantial portion of the acts giving
25 rise to this action occurred in this District.
26

1 3.4 Plaintiff resides in this District.

2 **IV. FACTS**

3 4.1 Plaintiff allegedly borrowed money from a consumer lending website,
4 myfundingchoices.com.

5 4.2 Thereafter, the alleged debt incurred with myfundingchoices.com allegedly
6 defaulted and was purchased by, or otherwise transferred to, NCG for collection.

7 4.3 In June 2022, Plaintiff's wife received a disturbing telephone call from someone
8 at NCG. Specifically, the message stated:

9
10 Yes. Hello and good morning, Elena Dale. Uh, this is John Underwood,
11 ma'am, with the offices of NCG and I'm getting ahold of you here, ma'am,
12 because your name and number came up listed as a relative person of
13 interest or a relevant point of contact, as well as sharing the same home
14 address with a person that we are trying to get some important information
15 to, uh, about a time sensitive complaint that we are scheduled to sign-off on
16 tomorrow at the close of business. I believe it's for your husband, Mr. Evan
17 Dale. If you could pass our information along to Mr. Dale, have him get in
18 contact with us immediately, there is an opportunity for us to notify him of
19 what's going on here, possibly get this situation resolved, but there is
20 nothing we can do on our end if we do not speak with him directly ahead of
21 that deadline again scheduled for tomorrow. Uh, so again, he would need to
22 return our call if he does want some kind of say in this, uh, before that
23 deadline tomorrow. John Underwood, NCG 716-314-1943. Any help you
24 can give us, ma'am, as far as getting the information to Evan Dale in a timely
25 fashion, we would not only appreciate that, but I'm sure he would as well
26 given the gravity and the time sensitive nature again of the matter we are
scheduled to sign-off on tomorrow at the close of business, uh, which would
be June, uh, Thursday, June the 22nd, and it would be at 2:00 PM Pacific
Standard time. Thanks for the help, ma'am. Have a good day. Bye-bye.

22 4.4 The message described above falsely conveyed that Defendant was calling about
23 a criminal matter.

24 4.5 The message described above also falsely conveyed that NCG was in possession
25 of a "complaint that [NCG was] scheduled to sign-off on the next day" as if a lawsuit or criminal
26

1 complaint was going to be filed against Plaintiff, when Defendant had no intention of bringing
2 a lawsuit.

3 4.6 Further, the message falsely created a sense of urgency by stating that if Plaintiff
4 did not call back before the next day there would be “nothing we can do.”

5 4.7 Plaintiff believes and therefore avers that NCG intended for these false threats
6 and false information to be conveyed to Plaintiff.

7 4.8 When Plaintiff’s wife spoke with NCG in a live phone call, NCG threatened
8 Plaintiff’s wife that Plaintiff would be sued on the debt referenced in the paragraphs above if it
9 was not repaid by 2:00 pm the next day (June 22, 2023).

10 4.9 In fact, NCG discussed the matter in a rude, belittling and demeaning way by
11 telling her something very similar to “happens to spouses all the time,” insinuating that Plaintiff
12 had fraudulently borrowed the money behind his wife’s back and that she was now in some sort
13 of legal trouble above and beyond any ordinary community property obligations.

14 4.10 This humiliated and embarrassed Plaintiff when his wife conveyed it to Plaintiff.

15 4.11 Plaintiff was further humiliated and embarrassed when his wife passed along the
16 message to Plaintiff that legal action was imminent.

17 4.12 NCG also left a threatening voicemail for Plaintiff. Specifically, the message
18 stated:

19 Yes. Hello and good morning Mr. Evan Dale. This is Mr. John Underwood,
20 sir, and I'm contacting you from the offices of NCG and I'm getting a hold
21 of you here, sir, in regards to giving you final notification as well as
22 providing due diligence on behalf of a client of ours in relation to a
23 complaint, uh, that was placed here in this office. It does pertain to yourself
24 that we are scheduled to sign-off on and is more importantly attached to
25 your social security number. You can reach me directly in relation to this at
26 716-314-1943. This is again, a time sensitive issue so the sooner you do get
in contact with us, the better, uh, ahead of our deadline for signing-off on

1 this particular matter, which has been slated for tomorrow, Thursday, June
2 the 22nd at close of business 2:00 PM Pacific Standard time here until 2:00
3 PM today as well. But again, I do need to stress to you the urgency of getting
4 back in contact with me as soon as you do receive this, as the more time we
5 do have to discuss a resolution ahead of that sign-off date tomorrow,
6 obviously the better. Hopefully we do speak with you before then. Have a
7 good day. Bye-bye.

8 4.13 The message described above falsely conveyed to Plaintiff that a complaint would
9 be filed the next day if he did not call back.

10 4.14 Defendant's language like "providing due diligence on behalf of a client" and
11 "complaint...that was placed here in this office" and "attached to your social security number"
12 and "deadline for signing-off on this particular matter, which has been slated for tomorrow" were
13 all used for the purpose of scaring Plaintiff into believing that he would be sued on the matter
14 the next day.

15 4.15 The information conveyed to Plaintiff directly and indirectly through his wife
16 would cause the least sophisticated consumer to believe that he would be sued on the Account
17 the next day if he did not call back to NCG immediately.

18 4.16 Some of the information conveyed to Plaintiff's wife would cause the least
19 sophisticated consumer to believe that he would be prosecuted criminally if he did not call back.

20 4.17 On information and belief, NCG had no present intention of suing Plaintiff on the
21 Account, nor to prosecute Plaintiff, if Plaintiff did not call back before the next day.

22 4.18 NCG never provided Plaintiff notice of his right to dispute the debt or request
23 validation of the debt. Further, NCG's comments creating false urgency of only one day to take
24 care of the Account overshadowed his rights to dispute and/or request validation of the Account.

25 4.19 The amount that Plaintiff allegedly defaulted on was approximately \$500, but
26 NCG was demanding repayment of a balance of more than \$2,000.

1 4.20 NCG further failed to provide Plaintiff with meaningful disclosure of its identity
2 when it hid behind and unregistered, unlicensed, false name of "NCG and Associates."

3 4.21 NCG's collection practices caused Plaintiff to suffer fear, anxiety, stress,
4 sleeplessness, mental anguish, embarrassment, mild depression and/or distraction from normal
5 life.

6 4.22 NCG 's purpose for calling Plaintiff was to attempt to collect the Account.

7 4.23 The telephone calls described above each constituted a "communication" as
8 defined by FDCPA § 1692a(2).

9 4.24 The only reason that NCG and/or its representative(s), employee(s) and/or
10 agent(s) made telephone call(s) to Plaintiff was to attempt to collect the Account.

11 4.25 The only reason that NCG and/or its representative(s), employee(s) and/or
12 agent(s) had telephone conversation(s) with Plaintiff was to attempt to collect the Account.

13 4.26 All of the conduct by NCG and/or its employees and/or agents alleged in the
14 preceding paragraphs was done knowingly and willfully.

15 4.27 As a consequence of NCG's collection activities and communication(s), Plaintiff
16 seeks damages and attorneys' fees and costs pursuant to the FDCPA.

17 4.28 This ordeal has caused Plaintiff significant emotional distress that nobody should
18 have to endure, sleepless nights, embarrassment, humiliation, intrusion into his privacy, an
19 unwelcome distraction in his family life, marital stress, and other ongoing and harms and losses.

20 4.29 This ordeal has caused Plaintiff significant loss of productivity at work, missed
21 work, wasted time that could have gone to other, more economically productive activities, and
22 other harms and losses to his property interests.

1 4.30 Plaintiff prays that NCG are never allowed to engage in such acts, conduct, or
2 business practices against any Washington consumer ever again.

3 4.31 The representative(s) and/or collector(s) at NCG were employee(s) and/or agents
4 of NCG at all times mentioned herein.

5 4.32 The representative(s) and/or collector(s) at NCG were acting within the course of
6 their employment at all times mentioned herein.

7 4.33 The representative(s) and/or collector(s) at NCG were under the direct
8 supervision and control of NCG at all times mentioned herein.

9 4.34 The actions of the representative(s) and/or collector(s) at NCG are imputed to
10 their employer, NCG.
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13 **V. FIRST CAUSE OF ACTION**
14 **(Violation of the Fair Debt Collection Practices Act)**

15 5.1 Plaintiff re-alleges sections I through IV, inclusive as though fully set forth
16 herein.

17 5.2 NCG violated 15 U.S.C. § 1692d by implying that Plaintiff was involved in a
18 criminal matter.

19 5.3 NCG violated 15 U.S.C. § 1692e(6) when it failed to provide meaningful
20 disclosure of its identity when it communicated with Plaintiff via telephone.

21 5.4 NCG violated 15 U.S.C. § 1692e by falsely threatening to sue Plaintiff when it
22 did not intend to do so; and by misrepresenting the legal status of the debt in question and the
23 nature of its services by implying or stating that it was a law office and that it was preparing a
24 lawsuit to file against Plaintiff; and by implying or stating that Plaintiff would be prosecuted for
25 failing to repay the Account; and by threatening to take an action that it did not intend to take by
26 threatening to sue Plaintiff; and by communicating information to Plaintiff that NCG knew was

1 false; and by using deceptive means to collect the Account; and by failing to inform Plaintiff that
2 it was a debt collector, attempting to collect a debt and that any information obtained would be
3 used for the purpose of debt collection.

4 5.5 NCG violated 15 U.S.C. § 1692g by failing to provide Plaintiff with notice of his
5 rights to dispute the debt and/or request validation of the debt.

6 5.6 NCG violated 15 U.S.C. § 1692f by attempting to collect an amount not
7 authorized by the agreement creating the debt, and by engaging in other unconscionable and
8 unfair tactics.

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10 5.7 NCG's actions entitle Plaintiff to statutory damages under 15 U.S.C. § 1692k.

11 5.8 NCG's conduct was a direct and proximate cause of Plaintiff's injuries.

12 5.9 NCG's actions illustrate why an injunction is necessary to protect Plaintiff and
13 other Washington consumers and citizens from similar harm.

14 **VI. SECOND CAUSE OF ACTION**

15 **(Washington Collection Agency Act Violation -- Per Se WCPA Violation)**

16 6.1 Plaintiff re-alleges sections I through V, inclusive as though fully set forth herein.

17 6.2 RCW 19.16.100(2) states that "'Collection agency' means and includes...Any
18 person directly or indirectly engaged in soliciting claims for collection, or collecting or
19 attempting to collect claims owed or due or asserted to be owed or due another person."

20 6.3 RCW 19.16.100(1) states that a "Person" for purposes of the Collection Agency
21 Act "includes individual, firm, partnership, trust, joint venture, association, or corporation."

22 6.4 RCW 19.16.100(9) states that a "licensee" for purposes of the Collection Agency
23 Act "means any person licensed under this chapter."

24 6.5 NCG is a corporation, and therefore is a "person" for purposes of the Washington
25 State Collection Agency Act (WCAA).

1 6.6 NCG is a Washington-licensed Out-of-State Collection Agency and is therefore
2 a “Collection Agency” and a “licensee” for purposes of the WCAA.

3 6.7 The alleged debt in this case is a “claim” as defined by RCW 19.16.100(5)
4 because a the Account is an “obligation for the payment of money or thing of value arising out
5 of any agreement or contract, express or implied.”

6 6.8 Plaintiff is a “debtor” as defined by RCW 19.16.100(11) because NCG alleges
7 that Plaintiff owed/owes a “claim.”

8 6.9 It is a prohibited practice under RCW 19.16.250(7) to use any name while
9 engaged in the making of a demand for any claim other than the name set forth on its current
10 license issued hereunder.

11 6.10 NCG violated RCW 19.16.250(7) by using the name “NCG and Associates” in
12 one or more communications with Plaintiff in which it made a demand for payment.

13 6.11 NGC violated RCW 19.16.250(8) by failing or refusing to itemize and provide
14 other details about the debt, including but not limited to the original balance at the time of
15 assignment, date of last payment, and any fees, costs or interest added by the collector.

16 6.12 It is a prohibited practice under RCW 19.16.250(16) to threaten to take action
17 against a debtor that it cannot legally take against the debtor.

18 6.13 NGC violated RCW 19.16.250(16) by threatening to take criminal or civil legal
19 action when NGC had no intention of doing so.

20 6.14 It is a prohibited practice under RCW 19.16.250(13) to communicate with a
21 debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor.

22 6.15 NCG violated RCW 19.16.250(13) by falsely threatening to sue Plaintiff and/or
23 prosecute Plaintiff if the debt was not repaid by the next day, and by implying to his wife that
24 Plaintiff had secretly borrowed the money shamefully behind her back, and further implying that
25 she might be in trouble because of it.
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1 7.2 The WCPA states: “Unfair methods of competition and unfair or deceptive acts
2 or practices in the conduct of any trade or commerce are hereby declared unlawful.” RCW
3 19.86.020.

4 7.3 The WCPA applies to the actions at issue herein because the Plaintiff are
5 “consumers” and NCG is a “business,” the complaint involves conduct which occurred in the
6 course of trade/commerce, the Plaintiff was damaged in his property by Defendant’s actions, and
7 the complaint involves a matter of public interest which is capable of repetition and affects other
8 consumers in this state.

9 7.4 Furthermore, Washington courts look to the various federal statutes dealing with
10 similar matters. Lightfoot v. MacDonald, 86 Wn.2d 331, 335, 544 P.2d 88 (1976).

11 7.5 One such federal statute which Washington courts look to in determining if a
12 particular act is unfair under the WCPA, is the Federal Trade Commission Act, after which the
13 WCPA was modeled, and which states: “Unfair methods of competition in or affecting
14 commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby
15 declared unlawful.” 15 U.S.C. §45(a)(1).

16 7.6 In this case, attempting to collect a debt in a harassing manner, among other unfair
17 and deceptive acts, is prohibited by the WCPA.

18 7.7 NCG committed unfair acts or practices in the conduct of trade or commerce and
19 violated the WCPA as codified in RCW 19.86, *et seq.*

20 7.8 Plaintiff was injured by NCG’s attempting to collect a debt in a harassing manner,
21 among other unfair and deceptive acts.

22 7.9 NCG’s actions are a direct and proximate cause of Plaintiff’ injuries.

23 7.10 NCG’s actions were intentional, willful, wanton, unfair, unconscionable, and
24 outrageous.

25 7.11 NCG’s actions illustrate why an injunction is necessary to protect Plaintiff and
26 other Washington debtors, consumers and citizens from similar harm.

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VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for judgment to be entered against NCG as follows:

A. For an Injunction requiring NCG to adopt new, improved policies and procedures for communications with consumers pursuant to RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d 1000 (2007); Hockley v. Hargitt, 82 Wn.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 783-84, 719 P.2d 531 (1986); Lightfoot v. MacDonald, 86 Wn.2d 331, 335-36, 544 P.2d 88 (1976);

B. For an Injunction preventing NCG from ever again collecting upon the subject debt, pursuant to RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d 1000 (2007); Hockley v. Hargitt, 82 Wn.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 783-84, 719 P.2d 531 (1986); Lightfoot v. MacDonald, 86 Wn.2d 331, 335-36, 544 P.2d 88 (1976);

C. For an Injunction preventing NCG from ever selling, transferring, or assigning this debt, pursuant to RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d 1000 (2007); Hockley v. Hargitt, 82 Wn.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 783-84, 719 P.2d 531 (1986); Lightfoot v. MacDonald, 86 Wn.2d 331, 335-36, 544 P.2d 88 (1976);

D. For an Injunction requiring NCG to adopt new, improved policies and procedures for the prevention of unlawful debt collection, pursuant to RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d 1000 (2007); Hockley v. Hargitt, 82 Wn.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 783-84, 719 P.2d 531 (1986); Lightfoot v. MacDonald, 86 Wn.2d 331, 335-36, 544 P.2d 88 (1976);

1 E. For an Injunction preventing the NCG, or any other person who may hereafter
2 legally seek to collect on this claim, from ever being allowed to recover any interest, service
3 charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges
4 otherwise legally chargeable to the debtor on such claim, pursuant to RCW 19.16.450, RCW
5 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d 1000 (2007); Hockley v.
6 Hargitt, 82 Wn.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman Ridge Training Stables, Inc. v.
7 Safeco Title Ins. Co., 105 Wn.2d 778, 783-84, 719 P.2d 531 (1986); Lightfoot v. MacDonald,
8 86 Wn.2d 331, 335-36, 544 P.2d 88 (1976);

9 F. For Actual and Compensatory damages in an amount to be proven at trial,
10 pursuant to RCW 19.86 *et seq.*, 15 U.S.C. § 1692k(1) and various common law claims;

11 G. For Incidental and Consequential damages in an amount to be proven at trial;

12 H. For treble Plaintiff's "actual" damages up to the amount of \$25,000, pursuant to
13 RCW 19.86, *et seq.*;

14 I. For statutory damages in the amount of \$1,000 pursuant to 15 U.S.C. §
15 1692k(2)(A);

16 J. For costs and reasonable attorney's fees in an amount to be proven at trial
17 pursuant to RCW 19.86 *et seq.*, and 15 U.S.C. § 1692k(3);

18 K. For interest on the above amounts as authorized by law;

19 L. For other relief as the Court deems just and equitable;

20 M. For leave to amend this complaint as needed and as required; and

21 N. For leave to seek Civil Rule 23(b) status if information becomes available through
22 discovery supporting the need for class action status.

23 **IX. REQUEST FOR TRIAL BY JURY**

24 Plaintiff hereby request a trial by jury pursuant to U.S. Const. Amend. 7 and FRCP 38.

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26 Dated this 21st day of July, 2023.

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Respectfully submitted,

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