

5. On this date, PRA has provided notice of this Removal to counsel for Plaintiff and to the Court of Common Pleas of Allegheny County, Pennsylvania.

WHEREFORE, Defendant Portfolio Recovery Associates, LLC respectfully removes this case to the United States District for the Western District of Pennsylvania.

Respectfully submitted,

MESSER STRICKLER BURNETTE, LTD.

By: /s/ Lauren M. Burnette
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Counsel for Defendant Portfolio Recovery Associates, LLC

Dated: September 28, 2023

CERTIFICATE OF SERVICE

I certify that on September 28, 2023, a true copy of the foregoing document was served on all unrepresented parties and counsel of record by electronic service and/or U.S. Mail, postage prepaid.

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Dated: September 28, 2023

EXHIBIT A

**IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA**

Kirby Thornton,

NO: AR-23-

Plaintiff,

TYPE OF PLEADING:

Complaint

vs.

Portfolio Recovery Associates, LLC,

Defendant.

FILED ON BEHALF OF:
Kirby Thornton, Plaintiff

COUNSEL OF RECORD:
Eugene D. Frank, Esquire
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**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

<p>Kirby Thornton,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>Portfolio Recovery Associates, LLC,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. AR-23-</p>
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NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objection to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

Lawyer Referral Service
Allegheny County Bar Association
400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone: (412) 261-5555
<https://www.getapittsburghlawyer.com/>

HEARING NOTICE

YOU HAVE BEEN SUED IN COURT. The above Notice to Defend explains what you must do to dispute the claims made against you. If you file the written response referred to in the Notice to Defend, a hearing before a board of arbitrators will take place in the Compulsory Arbitration Center. Report to the Arbitration Assembly Room, Courtroom Two, Seventh Floor, City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219 on _____, _____ at 9:00 A.M. **If you fail to file the**

response described in the Notice to Defend, a judgment for the amount claimed in the Complaint may be entered against you before the hearing.

DUTY TO APPEAR AT ARBITRATION HEARING

If one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a judge.

NOTICE: You must respond to this complaint within twenty (20) days or a judgment for the amount claimed may be entered against you before the hearing.

If one or more of the parties is not present at the hearing, the matter may be heard immediately before a judge without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a judge.

Parties

4. At all times mentioned herein, Plaintiff, Kirby Thornton (the “Plaintiff”), was a natural person and citizen of the Commonwealth of Pennsylvania and a “consumer” as defined in the FDCPA.

5. At all relevant times herein, Plaintiff was allegedly obligated to pay a defaulted consumer debt as represented by Defendant and as specifically set forth herein.

6. Defendant is a limited liability company established in the State of Delaware with a business address located at 120 Corporate Boulevard, Norfolk, VA 23502.

7. Defendant conducts business and/or attempts to collect delinquent consumer debts throughout the Commonwealth of Pennsylvania, including the County of Allegheny.

8. Defendant’s principal purpose is the collection of delinquent debts. See 15 U.S.C. § 1692a(6).

9. Defendant’s sole business is the purchasing of delinquent consumer debts with the purpose of attempting to collect on those debts by way of dunning collection letters sent to the consumers, collection telephone calls made to the consumers or third parties in an attempt to locate said consumers, filing collection lawsuits against consumers in various courts of law, and/or by reporting the delinquent debts to the credit bureaus.

10. Unlike a traditional creditor, Defendant does not issue credit and/or charge accounts or otherwise extend credit to consumers or have its own incentive to cultivate good will among its customers (i.e., consumers).

11. If Defendant was not trying to collect on the very debt accounts it claims to purchase or has purchased, Defendant would have no functional business to operate and cease to exist.

12. Defendant is a “debt collector” as defined in the FDCPA and, at all times relevant herein, acted by and/or through its owners, managers, officers, shareholders, authorized representatives, partners, employees, agents, affiants, attorneys, affiliates and/or workmen. See *Barbato v. Greystone Alliance, LLC*, 916 F.3d 260 (3d Cir. 2019).

13. Defendant regularly engages in collecting delinquent consumer debts and regularly uses the mails and/or the telephone in an attempt to collect, directly or indirectly, delinquent consumer debts allegedly owed or due.

Factual Allegations

14. Prior to the events that give rise to this action, Plaintiff had incurred a debt obligation on a Comenity Bank/The Buckle account ending 6934 in the amount of \$444.69 that was purportedly sold to Defendant after said account was delinquent and charged off (the “Debt”).

15. The Debt is a consumer debt as defined in the FDCPA because Plaintiff incurred the Debt for personal, family and/or household purposes, including, but not limited to, personal necessities and retail purchases.

16. No part of the Debt was related to business transactions.

17. On or about May 11, 2023, Defendant mailed or, caused to be mailed, directly to an unauthorized third party, Gregory Artim, a collection letter attempting to collect the Debt (the “Collection Letter”).

18. The Collection Letter is a “communication” as defined in the FDCPA given the Collection Letter conveyed information regarding the Debt, implied the existence thereof, and attempted to induce payment of the same.

19. Neither Defendant nor Comenity Bank were informed by Plaintiff or anyone else that Plaintiff had hired or otherwise retained Gregory Artim to represent him regarding the Debt.

20. Merely being represented by an attorney for one debt or legal matter does not mean the consumer provided consent and/or authorization to speak to or communicate with said attorney on *any other* debt or legal matter.

21. Defendant had no basis to send the Collection Letter in the manner and method that it was delivered to an unauthorized third party that disclosed Plaintiff's status as a debtor, the purported exact balance of the Debt, and other personal information connected to Plaintiff.

22. Upon being informed of the Collection Letter, Plaintiff experienced anxiety, aggravation, mental distress, concern, frustration, inconvenience, anger and/or worry.

Causes of Action
Count I
Violations of the FDCPA
15 U.S.C. § 1692, et seq.

23. Plaintiff incorporates by reference the above paragraphs of this Complaint as though fully set forth herein.

24. There is abundant evidence of the use of abusive, deceptive, and unfair collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, marital instability and invasions of individual privacy.

25. The FDCPA was enacted, in part, due to existing laws and/or procedures being inadequate for redressing the types of injuries as set forth herein.

26. Defendant knew or should have known that its or its attorney's/agent's/affiliate's actions violated the FDCPA.

27. Defendant is subject to strict liability for the actions in attempting to collect the Debt as set forth herein.

28. Defendant could have taken steps necessary to bring its actions within FDCPA compliance, but neglected to do so and failed to adequately review its or its attorney's/agent's/affiliate's actions to ensure compliance with the law.

29. In limiting disclosures to third parties, the FDCPA states, at 15 U.S.C. § 1692c(b):

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

30. Communicating with an attorney who was not representing Plaintiff for the Debt does not fall within any permitted exception provided for in Section 1692c(b) of the FDCPA.

31. Due to Defendant's communication to Gregory Artim via the Collection Letter, information about Plaintiff (including inter alia, his name, the amount allegedly owed, and the entity to which he owed the Debt) was transmitted to the possession of an unauthorized third-party.

32. Defendant violated the personal privacy of Plaintiff via the Collection Letter.

33. As a result, Plaintiff's privacy was invaded with his private and protected information being shared with unauthorized parties.

34. The conduct of Defendant, its agents, servants, representatives, managers, attorneys, vendors, and/or employees, as described herein was unfair, misleading, deceptive, and/or improper practices in violation(s) of the FDCPA's communications in connection with debt collection practices at 15 U.S.C. § 1692c and/or unfair collection practices at 15 U.S.C. § 1692f.

35. As a result of Defendant's violation(s) of the FDCPA, Plaintiff is entitled to actual damages, statutory damages and reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff respectfully demands that this Court enter a judgment against Defendant *not in excess of the arbitration limits* for the following:

- (a) Actual damages;
- (b) Statutory damages;
- (c) Attorneys' fees, litigation expenses and costs of suit;
- (d) Such other and further relief that this Court deems just and proper.

Plaintiff, Kirby Thornton, demands a trial by jury if removed or appealed as to all issues so triable.

Respectfully submitted,

Law Offices of Eugene D. Frank, P.C.

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