

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Presley Nicholson,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 1:23-cv-1753
)	
Portfolio Recovery Associates, LLC,)	
)	
Defendants.)	
)	

**COMPLAINT SEEKING DAMAGES FOR VIOLATION OF
THE FAIR DEBT COLLECTION PRACTICES ACT**

Introduction

1. This is an action for actual and statutory damages, legal fees and costs pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et. seq* (hereinafter referred to as the “FDCPA”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices. Id.
2. The purpose of the FDCPA is to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses. Id.
3. If a violation occurs, “the FDCPA is a strict liability statute that makes debt collectors liable for violations that are not knowing or intentional.” Donohue v. Quick Collect, Inc., 592 F.3d 1027, 1030 (9th Cir. 2010).
4. Even a single violation of the FDCPA is sufficient to support liability. Taylor vs. Perrin, Landry, deLaunay, & Durand, 103 F.3d 1232, 1238 (5th Cir. 1997).

Jurisdiction

5. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d).

Venue

6. Venue is proper in this Judicial District.
7. The acts and transactions alleged herein occurred in this Judicial District.

8. The Plaintiff resides in this Judicial District.
9. The Defendants transact business in this Judicial District.

Parties

10. The Plaintiff, Presley Nicholson, is a natural person.
11. The Plaintiff is a “consumer” as that term is defined by § 1692a.
12. The Plaintiff is “any person” as that term is used in 15 U.S.C. § 1692d preface.
13. The Defendant, Portfolio Recovery Associates, LLC, is a debt collection agency operating from an address at 120 Corporate Blvd, Suite 100, Norfolk, VA 23502.
14. The Defendant, Portfolio Recovery Associates, LLC, is a debt collection agency and is licensed by the State of Indiana. *See Exhibit “1” attached hereto.*
15. The Defendant regularly attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.
16. The Defendant regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another that arose out of transactions in which the money, property or services which are the subject of the transactions are primarily for personal, family or household purposes.

Factual Allegations

17. The Defendant is a debt collector, as that term is defined by the FDCPA, attempting to collect a debt from Plaintiff.
18. The Plaintiff incurred a debt to that was for primarily for personal, family or household purposes as defined by §1692(a)(5).
19. Many years ago, the debt owed by Plaintiff went into default. In fact, this debt is so old that Defendant added the legally required disclaimer that Defendant cannot sue Plaintiff for it because the statute of limitations has elapsed on the debt. *See Exhibit “2” attached hereto.*
20. After the debt went into default the debt was placed or otherwise transferred to the Defendant for collection.
21. The Plaintiff disputes the debt.
22. The Plaintiff requests that the Defendant cease all further communication on the debt.

23. The Defendant's collector(s) were employee(s) and/or representative(s) of the Defendant at all times mentioned herein.
24. The Defendant acted at all times mentioned herein through their employee(s) and/or representative(s).
25. On July 6, 2023, the Defendant sent a dunning letter to the Plaintiff in attempt to collect an alleged debt.
26. Plaintiff received the letter dated July 6, 2023, from Defendant.
27. The aforementioned letter stated that "[w]ithin 30 days of your final payment successfully posting, we will request that the three major credit reporting agencies delete our tradeline related to your account from your credit bureau report." *See Exhibit "2" attached hereto.*
28. The aforementioned sentence in the dunning letter from the Defendant made Plaintiff believe that this debt had been reported to all **three** credit reporting agencies.
29. On July 24, 2023, Plaintiff reviewed her TransUnion credit report and the aforementioned account was **not** listed on it.
30. On July 24, 2023, Plaintiff obtained and reviewed her TransUnion credit report dated **June 6, 2023**, and the aforementioned account was **not** listed on it. Thus, Defendant's dunning letter misrepresented that the aforementioned account was being reported to TransUnion.
31. On July 24, 2023, Plaintiff reviewed her TransUnion credit report from **January of 2023** and the aforementioned account was **not** listed on it. Thus, Defendant's dunning letter misrepresented that the aforementioned account was being reported to TransUnion.
32. After seeing that the aforementioned account was not on her TransUnion credit report dated July 24, 2023, Plaintiff reviewed her TransUnion credit report dated **June 2, 2023**, and the account was **not** listed on it. Thus, Defendant's dunning letter misrepresented that the aforementioned account was being reported to TransUnion.
33. After seeing that the aforementioned account was not on any of her TransUnion credit reports, Plaintiff obtained an Experian credit report. Her Experian credit report dated September 19, 2023, does not have the account on it.
34. On September 20, 2023, Plaintiff took the time to write a letter to Defendant inquiring about why the account was not on her TransUnion credit report. Plaintiff incurred the expense of the cost of a stamp to send this letter to Defendant. *See Exhibit "3" attached hereto.*
35. This account is so old that the Defendant is not legally permitted to place it on Plaintiff's credit reports.

36. Accordingly, Defendant falsely stated that this account was reported on all three credit bureaus.
37. Defendant's acts and omissions constitute a false threat to Plaintiff. *See Slick v. Portfolio Recovery Associates*, 2014 WL 4100416 (N.D. Ill. 2014)(the debt collector sent a dunning to a consumer in which it said that "NOTICE: If this account is eligible to be reported to the credit reporting agencies by our company, we are required by law to notify you that a negative credit report reflecting on your credit records may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations". However, the debt at issue in the *Slick* case was so old that it could not be reported to any credit reporting agency; accordingly, the court found that the debt collector violated the FDCPA by making a false threat).
38. The Defendants' violation of the FDCPA is material because Defendants' misrepresentations caused her to waste her time and money trying to find it on her credit reports. Plaintiff has been trying to increase her credit score so she has been carefully following her credit reports. Indeed, Plaintiff has paid a number of her old debts that were in collections. Defendant's misrepresentations regarding the credit reporting of this debt caused Plaintiff to take the time to write a letter to Defendant inquiring about the account so she has spent her time and money on postage attempting to figure out whether this account was, in fact, reported to all three (3) credit reporting agencies.
39. Because Defendant's letter caused Plaintiff to spend her time trying to find the account and cost her money in postage, these alleged violations are sufficient to show that Plaintiff has suffered an injury-in-fact.
40. The Defendants' collection communications are to be interpreted under the "unsophisticated consumer" standard. *See Gammon vs. GC Services, Ltd. Partnership*, 27 F.3d 1254, 1257 (7th Cir. 1994).

**First Claim for Relief:
Violation of the FDCPA**

1. The allegations of Paragraphs 1 through 40 of the complaint are realleged and incorporated herewith by references.
2. The Defendants' acts and omissions as described herein constitute a violation of 15 U.S.C. §1692d.
3. The Defendants' acts and omissions as described herein constitute a violation of 15 U.S.C. §1692e.
4. The Defendants' acts and omissions as described herein constitute a violation of 15 U.S.C. §1692f.
5. As a result of the above violations of the FDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages of \$1,000 per defendant, attorney fees, and costs.

Prayer for Relief

WHEREFORE, the Plaintiff prays that the Court grant the following:

1. A finding that the Defendant violated the FDCPA and/or an admission from the Defendant that it violated the FDCPA.
2. Actual damages under 15 U.S.C. § 1692k(a)(1).
3. Statutory damages under 15 U.S.C. § 1692k(a)(2)(A).
4. Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3).
5. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ John T. Steinkamp

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