

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

James Bernacik,

Plaintiff,

v.

Kohn Law Firm S.C.,

Defendant.

Case No.

**COMPLAINT FOR DAMAGES  
UNDER THE FAIR DEBT  
COLLECTION PRACTICES ACT AND  
OTHER EQUITABLE RELIEF**

**JURY TRIAL DEMANDED**

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**PARTIES**

1. Plaintiff, James Bernacik (“James”), is a natural person who resided in Mt. Prospect, Illinois, at all times relevant to this action.
2. Defendant, Kohn Law Firm S.C. (“KLF”), is a Wisconsin service corporation that maintained its principal place of business in Milwaukee, Wisconsin, at all times relevant to this action.

**JURISDICTION AND VENUE**

3. Pursuant to 28 U.S.C. §1331, this Court has federal question jurisdiction over this matter as it arises under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 et seq.
4. Pursuant to 28 U.S.C. § 1391(b), venue is proper because a substantial part of the events giving rise to this claim occurred in this judicial district.

**STATEMENT OF FACTS**

5. At all times relevant to this action, KLF collected consumer debts.

6. KLF regularly uses instrumentalities of interstate commerce and the mails to collect consumer debts owed or due or asserted to be owed or due another.
7. KLF is a "debt collector" that regularly collects consumer debts as defined by 15 U.S.C. §1692a(6).
8. As described, *infra*, KLF contacted James to collect a debt that was incurred primarily for personal, family, or household purposes.
9. This alleged obligation is a "debt" as defined by 15 U.S.C. § 1692a(5).
10. James is a "consumer" as defined by 15 U.S.C. § 1692a(3).
11. On February 16, 2021, Midland Credit Management (hereinafter "MCM"), by and through their counsel KLF, filed a collection lawsuit (hereinafter the "First Lawsuit") against James in regards to an alleged debt.
12. On information and belief, at the time of filing, KLF and/or MCM did not intend to meaningfully participate in litigation and, instead, used the court to try to encourage James to settle the alleged debt.
13. Having failed in its purpose, on June 21, 2021, KLF filed a Motion to Dismiss without prejudice.
14. On August 18, 2021, the Court dismissed the First Lawsuit against James without prejudice.
15. For reasons better explained by KLF and/or MCM, on April 6, 2022, MCM by and through their counsel KLF, filed a second collection lawsuit (hereinafter the "Second Lawsuit") against James.
16. On information and belief, at the time of filing the Second Lawsuit, KLF and/or MCM did not intend to meaningfully participate in litigation and, instead, used the court once again to try to scare James into settling the alleged debt.

17. On July 29, 2022, James was served with notice of the Second Lawsuit.
18. On August 4, 2022, James filed an Answer to the Second Lawsuit.
19. For nearly four months, KLF failed to prosecute its case against James.
20. On October 26, 2022, as a seemingly last-ditch effort, KLF emailed James to solicit a settlement of the Second Lawsuit. The email contained notice that the communication was from a debt collector and an attempt to collect a debt. *See* Exhibit A.
21. KLF's October 26, 2022, email to James did not provide any instruction or method to opt-out of the attempt to collect an alleged debt as required in Regulation F §1006.6(e).
22. Between October 28 and November 3, 2022, KLF and James engaged in discussion via email regarding the alleged debt.
23. None of KLF's emails to James provided any instruction or method to opt-out of the attempt to collect an alleged debt as required in Regulation F §1006.6(e).
24. On November 2, 2022, KLF emailed James threatening that it "will just proceed with litigation," if James didn't settle the alleged debt.
25. Having available defenses, James did not want to pay the alleged debt nor did he want to entertain settlement.
26. Upon information and belief, at the time KLF threatened James that it was going to "proceed with litigation", KLF did not intend to proceed with litigation and, instead, issued the warning to solicit a settlement from James.
27. For reasons explained, *infra*, James did not want to settle the debt.
28. Instead of proceeding with litigation in the Second Lawsuit as it threatened to do, on March 21, 2023, KLF instead again filed a Motion to Dismiss without prejudice, just as it did in the First Lawsuit.

29. On March 23, 2023, the Court entered the Order for Motion to Dismiss without prejudice.
30. On April 4, 2023, believing that KLF and/or MCM would try again to use the courts to extort money from James, James asked the court for protection and based on the circumstances, requested the Judge amend the dismissal to with prejudice.
31. Having received James' concerns as well pled, on April 20, 2023, the Court entered an amended Order amending the dismissal to "with prejudice".
32. On April 21, 2023, James emailed KLF a copy of the Court's signed Motion to Dismiss with prejudice. James requested that KLF inform its client that the case for the alleged debt was no longer pursuable in court.
33. KLF did not respond to James' email.
34. KLF has never "proceeded with ligation" after it threatened to do so.
35. KLF's deceptive, misleading, and unfair representations and/or omissions with respect to its collection efforts were material misrepresentations that affected and frustrated James' ability to intelligently respond to KLF's collection efforts because James could not opt-out of KLF's electronic communications attempting to collect an alleged debt.
36. Because of KLF's actions, James needed to spend time and incur costs researching his legal rights and responsibilities for adequate pro se representation.
37. KLF twice filed vexatious lawsuits in attempt to collect an alleged debt against James. KLF followed this practice with routinely filed Motions to Dismiss without prejudice instead of further pursuit of the lawsuit as it threatened to James.
38. KLF's collection efforts with respect to the alleged debt caused James to suffer concrete and particularized harm, *inter alia*, because the FDCPA provides James with the legally protected

right not to be misled or treated unfairly with respect to any action for the collection of any consumer debt.

### **ARTICLE III STANDING**

39. James has Article III standing to bring his FDCPA claim KLF because KLF's communications in attempt to collect an alleged debt constitute an unwanted intrusion upon his solitude, seclusion, and peace and quiet, which are common law analogues to the FDCPA violations asserted below. *See Vazzano v. Receivable Mgmt. Servs., LLC*, 621 F. Supp. 3d 700, 709 (N.D. Tex. 2022) (receiving an unwanted letter “has a ‘close relationship’ to the type of harm protected by the common law tort of intrusion upon seclusion (protecting against intrusion into private solitude)) (citing *TransUnion LLC v. Ramirez*, — U.S. —, 141 S. Ct. 2190, 2204 (2021)) (also citing *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 462 (7th Cir. 2020) (Barrett, J.) (“The harm posed by unwanted text messages is analogous to that type of intrusive invasion of privacy.”)).
40. Moreover, the emotional distress James has experienced is a sufficient concrete injury to establish Article III standing. *See Mayfield v. LTD Fin. Servs., L.P.*, No. 4:20-CV-01966, 2021 WL 4481089, at \*4 (S.D. Tex. Sept. 30, 2021) (citing *Rideau v. Keller Indep. Sch. Dist.*, 819 F.3d 155, 169 (5th Cir. 2016) (“[E]motional harm satisfies the ‘injury in fact’ requirement of constitutional standing.”)) (additional internal quotation marks omitted); *see also Smith v. Moss Law Firm, P.C.*, No. 18-2449, 2020 WL 584617, at \*5 (N.D. Tex. Feb. 6, 2020) (“legal costs, anxiety, and worry” caused by defendant's alleged FDCPA violation were concrete and particularized injuries for purposes of FDCPA claim).

**COUNT ONE**

**Violation of the Fair Debt Collection Practices Act**

41. Plaintiff re-alleges and incorporates by reference Paragraphs 5 through 40 above as if fully set forth herein.
42. In order to establish a violation of Section 1692d of the FDCPA, a consumer need not prove intentional conduct by the debt collector. *See Ellis v. Solomon & Solomon, P.C.*, 591 F.3d 130, 135 (2nd Cir. 2010); *Horkey v. J.V.D.B. & Assocs., Inc.*, 333 F.3d 769, 774 (7th Cir. 2013) (“[Plaintiff] points to no evidence in the record regarding [Defendant’s] intent, which is just as well, because intent is irrelevant” in a § 1692d claim).
43. “Instead, applying an objective standard, as measured by the ‘least sophisticated consumer,’ the consumer need only show that the likely effect of the debt collector’s communication or conduct could be construed as harassment, oppression or abuse.” *See Lee v. Credit Mgmt., LP*, 846 F. Supp. 2d 716, 721 (S.D. Tex. 2012).
44. The likely effect of Defendant’s debt collection efforts, as measured by the “least sophisticated consumer” standard, was “to harass, oppress, or abuse” Plaintiff.
45. Defendant violated 15 U.S.C. § 1692d by engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff in connection with the collection of the debt.

**COUNT TWO**

**Violation of the Fair Debt Collection Practices Act**

46. Plaintiff re-alleges and incorporates by reference Paragraphs 5 through 40 above as if fully set forth herein.
47. A debt collector’s intent to violate the FDCPA may be inferred by its maintenance of policies and procedures which, in themselves, violate the FDCPA. *See Anchondo v. Anderson*,

*Crenshaw & Associates, L.L.C.*, 256 F.R.D. 661, 671 (D.N.M. 2009); *see also Kromelbein v. Envision Payment Sol., Inc.*, 2013 WL 3947109, \*7 (M.D. Penn. Aug. 1, 2013)(“company policy can be just as much a violation of [FDCPA] as the rogue act of an individual employee. If anything, a company policy that violates the FDCPA is a more egregious transgression because it indicates endemic, rather than isolated, disregard for debtor rights.”); *citing Edwards v. Niagara Credit Sol., Inc.*, 586 F. Supp. 2d 1346, 1354 (N.D. Ga. 2008) (awarding maximum damages in part because conduct was company policy, thereby making it routine and frequent).

48. Defendant’s policies and procedures, *supra*, constitutes “conduct the natural consequence of which is to harass, oppress, or abuse” consumers.

49. Defendant’s practice, therefore, violates Section 1692d of the FDCPA, which provides:

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

*See* 15 U.S.C. §1692d.

50. Because Defendant’s practice, in itself, violates the FDCPA, it reflects an intent to harass consumers generally.

51. Defendant violated 15 U.S.C. § 1692d by filing vexatious lawsuits and threatening legal action against Plaintiff when it did not intend to pursue said legal action in Court.

### **COUNT THREE**

#### **Violation of the Fair Debt Collection Practices Act**

52. Plaintiff re-alleges and incorporates by reference Paragraphs 5 through 40 above as if fully set forth herein.

53. Defendant violated 15 U.S.C. § 1692e by using false, deceptive, or misleading representations or means in connection with the collection of the debt.

**COUNT FOUR**

**Violation of the Fair Debt Collection Practices Act**

54. Plaintiff re-alleges and incorporates by reference Paragraphs 5 through 40 above as if fully set forth herein.
55. Defendant violated 15 U.S.C. § 1692f by using unfair or unconscionable means to collect the debt.

**JURY DEMAND**

56. Plaintiff demands a trial by jury.

**PRAYER FOR RELIEF**

57. Plaintiff prays for the following relief:
- a. Judgment against Defendant for actual damages, statutory damages, and costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k.
  - b. For such other legal and/or equitable relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED,

Date: October 2, 2023

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