

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

Mario Lester,

)

Plaintiff,

)

Civil Action File No.:

)

vs.

)

Elevate Recoveries, LLC,

)

**COMPLAINT WITH
JURY TRIAL DEMAND**

)

and

)

Cascade Capital Funding, LLC,

)

Defendants

)

)

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, Mario Lester, is a natural person who resides in Bibb County, Georgia.

2. Defendant, Elevate Recoveries, LLC (hereinafter “Elevate”), is a limited liability corporation headquartered in Texas. It is registered to do business in Georgia and can be served through its registered agent, Corporation Service Company, 2 Sun Court, Suite 400, Peachtree Corners, Georgia 30092.

3. Defendant Cascade Capital Funding, LLC (hereinafter “Cascade”), is a limited liability corporation that can be served through its registered agent Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092.

JURISDICTION AND VENUE

4. 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.

5. 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.

6. 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.

7. Venue is proper in the Macon Division because the conduct complained of herein occurred in Bibb County, Georgia.

FACTUAL ALLEGATIONS

8. Plaintiff is allegedly obligated to pay a consumer debt arising the provision of medical services and is, therefore, a “consumer”, as that term is defined by 15 U.S.C. § 1692a(3).

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

10. Elevate uses interstate commerce and/or mail in its business in the collection of consumer debts.

11. Elevate manages, and collects upon, thousands of consumer debt accounts annually.

12. Elevate is, therefore, a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

13. Defendant Cascade’s principal business is the purchase of consumer debt and the collection of those accounts for its commercial benefit.

14. Cascade regularly collects, or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, to a third party.

15. Cascade uses interstate commerce and/or mail in its business in the collection of consumer debts.

16. Cascade manages, and collects upon, thousands of consumer debt accounts annually.

17. Cascade, is, therefore, a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

18. The Plaintiff recently became aware of a debt in collection by Cascade. On October 2nd, 2023, the Plaintiff initiated a call to Cascade in an effort to obtain more information. At that time, Cascade informed him that it had referred the account to Elevate and that he should contact it for information.

19. Cascade often retains third-party collectors to pursue defaulted consumer debt and retained Elevate for that purpose.

20. In so doing, Cascade provided Elevate with the Plaintiff’s personal information and information regarding the medical account in collection. This included the dates of service.

21. In the three years prior to the filing of this action, the Better Business Bureau has logged 199 consumer complaints against Elevate, many of which allege conduct that would violate the Fair Debt Collection Practices Act.

22. For all purposes related to its interactions with Plaintiff, Elevate was the agent of Cascade. All acts and omissions by Elevate were at the behest and for the benefit of Cascade.

23. Per Cascade's instruction, the Plaintiff called Elevate that same day, October 2nd, using the number provided by Cascade.

24. After verifying the Plaintiff's identity, Elevate confirmed that it was collecting a debt in the amount of \$935.00 originating with Georgia Emergency Group, and that the account it was now held by Cascade Capital. Elevate went on to advise the Plaintiff that the account arose from services provided on November 20th, 2017.

25. The Plaintiff, being very concerned about his credit rating, asked Elevate if the account had been reported to his credit file. Elevate responded that it had not, but that it was eligible to be reported and could be at any time.

26. Elevate then advised the Plaintiff that if he paid the account off that day, it would "go away," and would not be reported to his credit report.

27. The Plaintiff responded that he could not pay it off at this time to which the Elevate responded that it was authorized to offer Plaintiff a "settlement" of \$654.50 that would "save" Plaintiff \$280.50.

28. When the Plaintiff expressed that the settlement itself would be difficult, the Elevate offered a “hardship plan,” whereby Plaintiff would begin making payments of \$40.00 per month for six months. At the end of that time period, they could re-evaluate the account with Plaintiff and either pay the account off or continue monthly payments. The call ended shortly thereafter.

29. Based on his personal experience and the ordinary usage of the term “settle” related to his other consumer debt, the Plaintiff understood this to mean that the claim being collected by the Defendants was in suit or subject to suit thus generating a “settlement offer”.

30. The account in collection by the Defendants and which is the subject of Defendant’s collection efforts is based on medical services that were provided in November, 2017, per Defendant’s representations.

31. The account in collection with the Defendant is subject to a statute of limitations of no more than four years per O.C.G.A § 9-3-26.

32. Both Defendant’s had actual knowledge that the account in collection was not subject to legal process.

33. Although nondisclosure of an expired statute of limitations is not itself sufficient to violate the FDCPA, the Elevate’s representations go one step further by asking the consumer to "settle" his or her account. Such settlement offers serve only

to compound confusion over the debt's true character or legal status, as a consumer researching what "settlement" means would reasonably find the dictionary's definition of the term: "an act of bestowing or giving possession under legal sanction." Settlement, Merriam-Webster, <http://www.merriam-webster.com/dictionary/settlement> (last visited November 1, 2020); see also Settlement, Black's Law Dictionary (10th ed. 2014) (defining the term to mean "[a]n agreement ending a dispute or lawsuit").

34. Elevate's representations and entreaties were a violation of 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10). See, *Lopera v. Midland Credit Mgmt., Inc.*, 2016 WL 6650744 (M.D. Fla. Nov. 10, 2016) (denying dismissal of §§ 1692e, 1692e(2)(A), 1692e(10), and 1692f claims based on letter offering to "resolve your unpaid" debt through payment plan, without disclosing that statute of limitations could be revived by partial payment or agreement to pay). *Daugherty v. Convergent Outsourcing, Inc.*, 836 F.3d 507 (5th Cir. 2016) (regardless of whether litigation is expressly threatened, offering to "settle" time-barred debt, without explaining that debt is not enforceable, can violate §§ 1692e and 1692f).

35. Whether a debt is barred by an applicable statute of limitations is fundamental to the debt's character and legal status. See *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254, 1260 (11th Cir. 2014) (explaining the significance to debtors

of statutes of limitations in determining a debt's legal status), *cert. denied*, 135 S. Ct. 1844, 191 L. Ed. 2d 724 (2015).

36. Under Georgia law, were the Plaintiff to make a partial payment via a writing acknowledging the debt, a check or money order for example, it could have the effect of reviving what is currently an expired statute of limitations thus exposing the Plaintiff to legal action on the debt.

37. At no time during their communications did Elevate advise the Plaintiff that the applicable statute of limitations had expired or that it could be revived as a result of Plaintiff complying with its requests to begin partial payments.

38. The Plaintiff was extremely concerned about resolving this debt prior to its reporting to his credit file and/or being subject to legal process. He expended a significant amount time communicating with friends and family in an effort to raise the money quoted as the settlement figure but was unsuccessful.

39. On October 10th, 2023, the Plaintiff accessed his credit file as published by Transunion, a major credit reporting bureau. At that time, he noted that Elevate had reported the account in collection in the amount of \$935.00. Moreover, he noted that, contrary to the Elevate's representations and assurances in their telephone conversation a week prior, it had been reporting the account as delinquent and in collection to Transunion since July, 2023.

40. Elevate’s representations to the Plaintiff that it had not yet reported the account in collection as of October 2nd, 2023, were objectively false and materially misleading.

INJURIES-IN-FACT AND DAMAGES

41. 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.

42. 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).

43. 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.

44. As a result of the Defendants’ actions and/or omissions, Plaintiff has suffered actual damages, including but not limited to the following:

- a.) Being subjected to false, deceptive, and unfair debt collection practices;

b.) Confusion related to the Defendants' credit reporting practice that adversely impacted the Plaintiff's ability to prioritize debt payments when they were possible;

c.) Uncompensated time expended away from work and/or activities of daily living, to confer with counsel regarding the Defendants' collection efforts;

d.) Anxiety and worry caused by concern that Plaintiff was "missing out" on a substantial settlement opportunity that would leave him subject to legal process; and,

e.) The anxiety and worry experienced by the Plaintiff was sufficient to negatively affect his demeanor, his ability to engage in daily activities, resulted in sleeplessness, and adversely affected his relationships with others.

45. 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. § 1692e and its subparts

46. 15 U.S.C. § 1692e specifically prohibits the use of any false, deceptive, or misleading representations or means in connection with the collection of any debt.

47. The use of “or” in § 1692e means a representation violates the FDCPA if it is false or deceptive or misleading. *Bourff v. Rubin Lublin, LLC*, 674 F.3d 1238, 1241 (11th Cir. 2012).

48. “The FDCPA protects consumers from abusive and deceptive practices by debt collectors, and protects non-abusive debt collectors from competitive disadvantage. 15 U.S.C. § 1692(e). Section 1692e forbids the use of ‘any false, deceptive, or misleading representation or means’ in debt collection, and provides a non-exhaustive list of prohibited conduct.” *United States v. National Financial Servs.*, 98 F.3d 131, 135 (4th Cir. 1996).

49. “Violations of Section 1692e are viewed from the perspective of the “least sophisticated consumer.” *National Financial Servs.*, 98 F.3d at 135-36. “[E]valuating debt collection practices with an eye to the ‘least sophisticated consumer’ comports with basic consumer-protection principles.” *Id.* at 136. The purpose of that standard “is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd.” *Id.* at 136 quoting *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2nd Cir. 1983). Indeed, its purpose is to protect “naive consumers” with a

minimal understanding of personal finance and debt collection. *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1194 (11th Cir. 2010) (per curiam).

50. Moreover, the least sophisticated consumer is not to be held to the same standard as a reasonably prudent consumer. The least sophisticated consumer, though not unreasonable, is "ignorant" and "unthinking," "gullible," and of "below-average sophistication or intelligence," *Pinson v. JPMorgan Chase Bank, Nat'l Ass'n*, No. 16-17107, 2019 U.S. App. LEXIS 33662, at 12-13 (11th Cir. Nov. 12, 2019), quoting *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993)

51. A false representation in connection with the collection of a debt is sufficient to violate the FDCPA, even if it is not alleged or proven to be misleading or deceptive.

52. Elevate's representations and implications that led Plaintiff to believe that he may be subject to legal process in connection with the debt in collection was objectively false and or materially misleading as the applicable statute of limitations expired over a year earlier. Elevate's representations and implications were a violation of 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(5) and 1692e(10).

53. Elevate's representations to the Plaintiff falsely stating that it had not yet reported the account to Plaintiff's credit file as of October 2nd, 2023, were

objectively false and materially misleading and a violation of 15 U.S.C. §§ 1692e, 1692e(2)(A), and 1692e(10).

COUNT II

VIOLATIONS OF THE GEORGIA FAIR BUSINESS PRACTICES ACT O.C.G.A. § 10-1-390, et seq.

54. Plaintiff incorporates by reference paragraphs 1 through 53 as though fully stated herein.

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

56. 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.

57. 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.

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

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

60. Elevate's conduct has implications for the consuming public in general.

61. Elevate's conduct negatively impacts the consumer marketplace.

62. Upon information and belief, Elevate does not maintain a place of business in Georgia and has no assets in Georgia, thus relieving Plaintiff of the Notice and Demand requirements of O.C.G.A. § 10-1-399(b).

63. As a result of Elevate'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).

64. As a result of Elevate'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).

65. As a result of Elevate'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).

66. Plaintiff is entitled to recover reasonable attorney's fees and expenses of litigation pursuant to O.C.G.A. § 10-1-399(d).

COUNT III

NEGLIGENT HIRING

67. Plaintiff incorporates by reference paragraphs 1 through 53 as though fully stated herein.

68. Cascade knew or should have known that Elevate has a history of engaging in conduct that violates the rights of consumers.

69. Cascade was negligent in retaining Elevate and providing it with Plaintiff's personal information without verifying that it had the systems and procedures in place to safeguard Plaintiff's statutory rights.

TRIAL BY JURY

70. Plaintiff is entitled to and hereby requests a trial by jury.

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, jointly and severally, 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);
- e.) Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3); and
- f.) Such other and further relief as may be just and proper.

Respectfully submitted this 16th day of October, 2023.

BERRY & ASSOCIATES

/s/ Matthew T. Berry

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