

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA**

VERA GABRIEL,

Plaintiff,

v.

WAKEFIELD & ASSOCIATES, LLC,

Defendant.

Civil Action No: 3:23-cv-1403

**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

Plaintiff Vera Gabriel (“Plaintiff”) brings this Complaint by and through her attorneys, against the Defendant Wakefield & Associates, LLC (“Defendant”), based upon information and belief of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

**INTRODUCTION/PRELIMINARY STATEMENT**

1. Congress enacted the Fair Debt Collection Practices Act (“the FDCPA”) in 1977 in response to the “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. § 1692(a). At that time, Congress was concerned that “abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” *Id.* Congress concluded that “existing laws...[we]re inadequate to protect consumers,” and that “the effective collection of debts” does not require “misrepresentation or other abusive debt collection practices.” *Id.* at §§ 1692(b) & (c).

2. Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to ensure “that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.” *Id.* at § 1692(e). After determining that the existing consumer protection laws were inadequate, *see id.* at § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* at § 1692k.

3. On November 30, 2021, the Consumer Financial Protection Bureau (“CFPB”), issued Regulation F, 12 C.F.R. § 1006,<sup>1</sup> (“Regulation F”) which details what information and disclosures are required in collection communications sent by a debt collector to a debtor. Regulation F specifically requires information that informs consumers that any notice of a dispute of a debt means that a debt collector cannot continue to collect on the debt until it’s been verified. 12 C.F.R. § 1006.34(c)(3)(i).

### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692 *et seq.* The Court has pendent jurisdiction over the State law claims in this action pursuant to 28 U.S.C. § 1367(a).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) as this is where the Plaintiff resides, as well as where a substantial part of the events or omissions giving rise to the claim occurred.

### **NATURE OF THE ACTION**

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<sup>1</sup> 12 CFR Part 1006 - Fair Debt Collection Practices Act (Regulation F), CONSUMER FINANCIAL PROTECTION BUREAU, Nov. 30, 2021, <https://www.consumerfinance.gov/rules-policy/regulations/1006/>

6. Plaintiff brings this action pursuant to § 1692 *et seq.* of Title 15 of the United States Code, commonly referred to as the Fair Debt Collection Practices Act (“FDCPA”).

7. Plaintiff is seeking damages and declaratory relief.

### **PARTIES**

8. Plaintiff is a resident of the State of Florida, County of Saint Johns.

9. Defendant is a “debt collector” as the phrase is defined in 15 U.S.C. § 1692(a)(6) and as used in the FDCPA, whose registered agent for service in Florida is c/o Legalinc Corporate Services Inc., located at 476 Riverside Ave., Jacksonville, Florida 32202.

10. Upon information and belief, Defendant is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

### **FACTUAL ALLEGATIONS**

11. Plaintiff repeats, reiterates and incorporates the allegations contained in the paragraphs above with the same force and effect as if the same were set forth at length herein.

12. On or around July 12, 2021, Plaintiff visited the Aviles Dental Care Clinic (“Aviles”) to receive a dental bridge implant.

13. This initial service was paid in full by the Plaintiff.

14. A few days after the procedure, the dental bridge implant broke.

15. Plaintiff contacted Aviles and Aviles stated that it will provide another cosmetically inferior bridge to replace the broken dental bridge at no cost to the Plaintiff.

16. Several weeks after this second procedure, Plaintiff received a bill from Aviles which included charges for the replacement bridge implant which was supposed to be free of charge.

17. Plaintiff contacted Aviles and the receptionist explained to her that the new charge was a bookkeeping error.

18. On December 14, 2021, Aviles sent a statement to the Plaintiff, showing that the corrected balance owed is \$983.78. A true and accurate copy of this statement is attached as Exhibit A, hereinafter, "Aviles Statement."

19. The alleged Aviles obligation arose out of transactions which were primarily for personal, family or household purposes.

20. The alleged obligation is a "debt" as defined by 15 U.S.C. § 1692a(5).

21. Thus, Aviles is a "creditor" as defined by 15 U.S.C. § 1692a(4).

22. Upon information and belief, Aviles contracted with Defendant for the purposes of collecting the alleged debt.

23. Defendant collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and internet.

24. On March 15, 2023, Defendant mailed a collection communication to the Plaintiff to collect on the Aviles obligation. A true and accurate copy of this collection communication is attached as Exhibit B, hereinafter, "Collection Letter."

25. Defendant's Collection Letter to the Plaintiff stated that the balance it was legally allowed to collect upon was \$1,229.73. *See* Exhibit B.

26. The Collection Letter did not state that the balance may increase due to fees and/or interest, nor provide any explanation as to the higher balance.

27. Defendant is attempting to collect a higher balance than what they are legally allowed to collect upon.

28. On March 30, 2023, Plaintiff sent a dispute letter to the Defendant and requested more information pertaining to the Aviles obligation Defendant was collecting. A true and accurate copy of this response letter is attached as Exhibit C, hereinafter, "Dispute Letter."

29. On May 1, 2023, Defendant responded to Plaintiff's Dispute Letter, stating that its internal review of the Aviles obligation verifies that the amount of the debt is the proper amount Defendant is allowed to collect. Furthermore, it states "We have attached proof of the amount due."

30. Included in this response is the detailed ledger that Aviles provided pertaining to charges accumulated to the Plaintiff. A true and accurate copy of this ledger is attached as Exhibit D, hereinafter, "Aviles Ledger."

31. Upon information and belief, the \$399.00 charge on August 17, 2021 of the Aviles Ledger was the inadvertent charge that Aviles imposed on the Plaintiff. *See Exhibit D.*

32. On the same Aviles Ledger, the \$399.00 amount was removed by credit adjustments made by Aviles. *See id.*

33. Additionally, the last entry of the Aviles Ledger shows that the written off balance sent to collections was only \$983.78. *See id.*

34. Even after supposedly doing a verification of the underlying Aviles obligation, Defendant still maintains that the balance owed is \$1,229.73.

35. Defendant clearly did not review the records they provided as it contained a lower balance with no explanation for the higher amount being sought.

36. As evidenced from the original creditor's records, the Aviles obligation is only \$983.78. *See Exhibit A and Exhibit D.*

37. Additionally, the Aviles Ledger details the corrections made to Plaintiff's balance before the debt was charged off and sent to collections. *See Exhibit D.*

38. Pursuant to 15 U.S.C. § 1692e: "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt."

39. Pursuant to 15 U.S.C. § 1692e(2)(A), a debt collector violates the FDCPA when it makes a false representation regarding the "the character, amount, or legal status of any debt."

40. Pursuant to 15 U.S.C. § 1692e(10), a debt collector violates the FDCPA when it uses “any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.”

41. By stating an incorrect balance on the Collection Letter, Defendant misrepresented the amount of the balance and attempted to collect on a debt while making a misrepresentation.

42. Therefore, Defendant violated 15 U.S.C. § 1692e.

43. Pursuant to the FDCPA, “a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” *See* 15 U.S.C. § 1692f.

44. For example, a debt collector violates 15 U.S.C. § 1692f(1) when it attempts to collect “any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”

45. Therefore, Defendant violated 15 U.S.C. § 1692f when it acted unfairly and unconscionably by attempting to collect more than it was legally obligated to collect upon.

46. Congress is empowered to pass laws and is well-positioned to create laws that will better society at large.

47. The harms caused by Defendant have a close relationship with various harms traditionally recognized as providing a basis for lawsuit in American courts.

48. As it relates to this case, the common-law analogues are to the traditional torts of fraud, negligent infliction of emotional distress, invasion of privacy, and nuisance.

49. For the purposes of this action, only a close relationship to common law harm is needed, not an exact duplicate.

50. Plaintiff suffered various emotional harms including, but not limited to, increased heartrate, difficulty with sleep, anxiety, and stress associated with the Defendant attempting to collect for more than what was actually owed.

51. Defendant's conduct demonstrated a reckless disregard for causing Plaintiff to suffer from emotional stress.

52. Defendant's violations were knowing, willful, negligent, and/or intentional, and Defendant did not maintain policies and procedures reasonably adapted to avoid such violations.

53. Defendant's collection efforts with respect to the alleged debt caused Plaintiff to suffer concrete and particularized harm, inter alia, because the FDCPA provides Plaintiff with the legally protected right to not be misled or treated unfairly with respect to any action for the collection of any consumer debt.

54. Defendant's conduct with respect to its collection efforts were material in that the same affected and frustrated Plaintiff's ability to intelligently respond to Defendant's collection efforts.

55. Plaintiff would have pursued a different course of action were it not for Defendant's violations.



56. Plaintiff's creditworthiness was harmed because the misstated balance has been reported to the major primary credit reporting agencies (Equifax Information Services, LLC, Trans Union, LLC, and Experian Information Solutions, Inc.) and increased her debt-to-income ratio which negatively impacts her credit score.

57. Defendant's communications further caused distress, embarrassment, humiliation, disruption, and other damages and consequences.

58. Defendant's collection efforts with respect to the debt caused Plaintiff to suffer concrete and particularized harm, inter alia, because the FDCPA provides Plaintiff with the legally protected right not to be harassed or treated unfairly in connection with the collection of a debt.

59. Defendant's collection efforts with respect to the debt caused Plaintiff to suffer concrete and particularized harm, inter alia, because the FDCPA provides Plaintiff with a legally protected right to not suffer an invasion of privacy in connection with the collection of a debt.

60. In reliance on Defendant's conduct, Plaintiff expended time and money in an effort to mitigate the risk of future financial harm in the form of dominion and control over her funds.

61. In reliance on Defendant's conduct, Plaintiff expended time and money in an effort to mitigate the risk of future financial and reputational harm in the form of debt collection informational furnishment, and ultimate dissemination, to third parties.

62. Based on Defendant's FDCPA violations, Plaintiff expended time, money, and resources to determine how to respond to Defendant's debt collection activities.

63. As a result of Defendant's deceptive, misleading, unfair, unconscionable, and false debt collection practices, Plaintiff has been damaged.

### **COUNT I**

#### **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692e *et seq.***

64. Plaintiff repeats, reiterates, and incorporates the allegations contained in paragraphs numbered 1 through 63 above herein with the same force and effect as if the same were set forth at length herein.

65. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated the various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.

66. Pursuant to 15 U.S.C. § 1692e: "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt."

67. Pursuant to 15 U.S.C. § 1692e(2)(A), a debt collector violates the FDCPA when it makes a false representation regarding the "the character, amount, or legal status of any debt."

68. Pursuant to 15 U.S.C. § 1692e(10), a debt collector violates the FDCPA when it uses "any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer."

69. Thus, Defendant violated 15 U.S.C. § 1692e:

- a. By sending the Collection Letter to the Plaintiff, which misrepresented the amount owed on the Aviles obligation; and
- b. By failing to maintain policies and procedures that were reasonably calculated to accurately state what the balance owed is on an alleged debt.

70. By reason thereof, Defendant is liable to Plaintiff for judgment in that Defendant's conduct violated 15 U.S.C. § 1692e *et seq.* of the FDCPA, and includes actual damages, statutory damages, costs, and attorneys' fees.

## **COUNT II**

### **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692f *et seq.***

71. Plaintiff repeats, reiterates, and incorporates the allegations contained in paragraphs numbered 1 through 63 above herein with the same force and effect as if the same were set forth at length herein.

72. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated the various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692f.

73. Pursuant to 15 U.S.C. § 1692f, "a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt."

74. Additionally, a debt collector violates the FDCPA when it seeks to collect "any amount (including any interest, fee, charge, or expense incidental to the principal

obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”

75. Defendant violated 15 U.S.C. § 1692f:

- a. By unfairly attempting to collect an alleged debt without expressly stating the correct amount it can collect upon and attempting to collect more than it is legally entitled to; and
- b. By failing to maintain policies and procedures that were reasonably calculated to accurately state what the balance owed is on an alleged debt.

76. By reason thereof, Defendant is liable to Plaintiff for judgment in that Defendant’s conduct violated 15 U.S.C. § 1692f *et seq.* of the FDCPA, which includes actual damages, statutory damages, costs, and attorneys’ fees.

**DEMAND FOR TRIAL BY JURY**

77. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Vera Gabriel demands judgment from Defendant as follows:

1. Awarding the Plaintiff actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
2. Awarding the Plaintiff statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A);
3. Awarding the Plaintiff costs for this Action, including reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3);
4. Providing declaratory relief for the Plaintiff by stating that Defendant violated the FDCPA pursuant to 28 U.S.C. § 2201; and
5. Awarding the Plaintiff any such other and further relief as this Court may deem just and proper.

Dated: November 29, 2023

Respectfully submitted,

*/s/ Justin Zeig*

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