

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MATHEW HILLBURN,)	
)	
Plaintiff,)	
)	
v.)	No. 4:23-cv-03235
)	
CREDIT COUNSEL INC.,)	
)	
Defendant.)	

PLAINTIFF’S COMPLAINT

Plaintiff, MATHEW HILLBURN (“Plaintiff”), by and through his attorneys, AGRUSS LAW FIRM, alleges the following against Defendant, CREDIT COUNSEL INC. (“Defendant”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (“FDCPA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 15 U.S.C. § 1692k (FDCPA).
3. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy.”
4. Venue and personal jurisdiction in this District are proper because Defendant does or transacts business within this District, and a material portion of the events at issue occurred in this District.

PARTIES

5. Plaintiff is a natural person residing in Hastings, Adams County, State of Nebraska.

6. Plaintiff is a consumer as that term is defined by 15 U.S.C. § 1692a(3).
7. Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. § 1692a(5).
8. Defendant is a debt collector as that term is defined by 15 U.S.C. § 1692a(6).
9. Within the last year, Defendant attempted to collect a consumer debt from Plaintiff.
10. Defendant is a collection agency headquartered in Pembroke Pines, Broward County, Florida.
11. Defendant is a business entity engaged in the collection of debt within the State of Maryland.
12. Defendant's business includes, but is not limited to, collecting on unpaid, outstanding account balances.
13. The principal purpose of Defendant's business is the collection of debts allegedly owed to third parties.
14. Defendant regularly collects, or attempts to collect, debts allegedly owed to third parties.
15. During the course of its attempts to collect debts allegedly owed to third parties, Defendant sends to alleged debtors bills, statements, and/or other correspondence, via the mail and/or electronic mail, and initiates contact with alleged debtors via various means of telecommunication, such as by telephone and facsimile.
16. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

17. Defendant is attempting to collect a consumer debt from Plaintiff, allegedly owed by his grandmother, originating from an account balance with Kensington at Hastings, an assisted living facility in the state of Nebraska.

18. The alleged debt at issue arises from transactions for personal, family, and household purposes.
19. Within the past year, Defendant began placing calls to Plaintiff on his cellular telephone at XXX-XXX-0390 in an attempt to collect the alleged debt.
20. Defendant calls Plaintiff from, at least, 800-328-8123, which is one of Defendant's telephone numbers.
21. Defendant also places numerous calls from a private number.
22. Within the past year, Defendant has placed multiple calls to Plaintiff in a single day.
23. Within the past year, Defendant has called Plaintiff more than seven times within seven consecutive days.
24. Within the past year, Plaintiff answered one of Defendant's call and spoke to a male collector who identified himself by the name Jeffrey Allen.
25. During the above-referenced conversation:
 - a. Plaintiff requested Defendant stop calling him.
 - b. Defendant's collector threatened legal action if the matter remained unresolved, making statements to Plaintiff that Defendant and Defendant's attorney were ready to act and take legal action on the matter.
 - c. Defendant's collector called Plaintiff a "deadbeat".
 - d. Defendant's collector called Plaintiff "immature".
 - e. Defendant's collector questioned Plaintiff's intelligence.
 - f. Defendant's collector told Plaintiff he "sucked" as a POA (referencing Plaintiff's role as medical Power of Attorney for his grandmother) and that he was a "bad" POA.

26. Plaintiff has also requested Defendant stop calling him in writing to the mailing address listed on Defendant's website, 8362 Pines Blvd. Suite 316, Pembroke Pines, FL 33024.
27. Despite the foregoing, Defendant continued to call Plaintiff to collect on the alleged debt.
28. Within the past year, Defendant has also left voicemail messages on Plaintiff's telephone in connection with their attempts to collect from Plaintiff on the alleged debt.
29. In or around December 2022, Defendant's collector called Plaintiff and left the following voicemail message on Plaintiff's telephone:
 - a. Yes, I'm looking for Matt Hillburn. Mr. Hillburn, Jeffrey Allen calling on behalf of my client at Kensington at Hastings regarding the account of Andrea Fisher. You're failing miserably as a power of attorney and you've not communicated, you've ignored literally over half a dozen messages, and my client has still not been compensated for the care of Andrea. My number again, 1-800-328-8123, case 403333.
30. Defendant's collector provides the callback number 1-800-328-8123, which is one of Defendant's telephone numbers.
31. The above-referenced voicemail fails to disclose the name of the business from which the representative is calling Plaintiff.
32. The above-referenced voicemail fails to disclose that Defendant is contacting Plaintiff in an attempt to collect an alleged debt.
33. Defendant has not provided Plaintiff with validation of the alleged debt.
34. Defendant has not filed any legal action against Plaintiff in connection to the alleged debt.
35. The natural consequences of Defendant's actions were to unjustly condemn and vilify Plaintiff for his non-payment of the alleged debt.

36. The natural consequences of Defendant's statements and actions was to produce an unpleasant and/or hostile situation between Defendant and Plaintiff.

37. The natural consequences of Defendant's actions was to cause Plaintiff mental distress.

38. Defendant's actions constitute an invasion of Plaintiff's individual privacy and Plaintiff has suffered a concrete and particularized injury to his legally protected interest of his individual privacy.

DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

39. Defendant violated the FDCPA based on the following:

- a. Defendant violated § 1692b of the FDCPA by communicating with any person other than the consumer other than for purposes of acquiring location information, when Defendant communicated with Plaintiff and such communications were not for the purpose of acquiring the debtor's location information;
- b. Defendant violated § 1692b(1) of the FDCPA by communicating with any person other than the consumer and failing to state that the collector is confirming or correcting location information concerning the consumer, when Defendant spoke to Plaintiff and left a message and failed to state that Defendant was confirming or correcting location information concerning the consumer;
- c. Defendant violated § 1692b(2) of the FDCPA by communicating with any person other than the consumer and stating that such consumer owes any debt, when Defendant communicated with Plaintiff and indicated that Andrea Fisher owed a debt;
- d. Defendant violated § 1692b(3) of the FDCPA by communicating with any person other than the consumer and communicating with such person more than once

unless requested to do so by such person, when Defendant communicated with Plaintiff multiple times;

- e. Defendant violated § 1692d of the FDCPA by engaging in conduct that the natural consequence of which was to harass, oppress, and abuse in connection with the collection of an alleged debt, when Defendant contacted Plaintiff to collect a debt Plaintiff did not owe, when Defendant continued to contact Plaintiff to attempt to collect on the alleged debt despite Plaintiff's requests Defendant stop calling, when Defendant falsely threatened to take legal action against Plaintiff in connection to the alleged debt, when Defendant used hostile language in communication with Plaintiff, questioned his intelligence, and told him he was "failing miserably" as medical Power of Attorney, and when Defendant called Plaintiff more than seven times within seven days;
- f. Defendant violated § 1692d(5) of the FDCPA by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass any person at the called number, when Defendant called Plaintiff more than seven times within seven days;
 - a. Defendant violated § 1692d(6) of the FDCPA by placing a telephone call to Plaintiff without meaningful disclosure of the caller's identity, when Defendant left a voicemail for Plaintiff and failed to disclose the identity of the collection agency;
 - b. Defendant violated § 1692e of the FDCPA by its use of any false, deceptive, or misleading representation or means in connection with the collection of any debt when Defendant engaged in at least the following discrete violations of § 1692e;
 - c. Defendant violated § 1692e of the FDCPA by its use of any false, deceptive, or

misleading representation or means in connection with the collection of any debt, when Defendant attempted to collect payment from Plaintiff on a debt Plaintiff did not owe, when Defendant created the false impression on Plaintiff that Defendant was permitted to call Plaintiff with impunity after Plaintiff disputed the debt and despite Plaintiff's request for Defendant to stop calling him, and when Defendant engaged in the following discrete violations of 1692e;

- d. Defendant violated § 1692e(2) of the FDCPA by falsely representing the character, amount, or legal status of any debt, when Defendant attempted to collect payment from Plaintiff on a debt Plaintiff did not owe, and when Defendant created the false impression on Plaintiff that Defendant intended to take legal action if Plaintiff failed to resolve the alleged debt;
- e. Defendant violated § 1692e(5) of the FDCPA by threatening to take action that cannot legally be taken or that is not intended to be taken, when Defendant threatened Plaintiff with legal action and Defendant did not intend to take such action, and when Defendant attempted to collect from Plaintiff on a debt Plaintiff did not owe;
- f. Defendant violated § 1692e(10) of the FDCPA by using any false representation or deceptive means to collect or attempt to collect any debt, when Defendant attempted to collect from Plaintiff on a debt Plaintiff did not owe, when Defendant falsely implied legal action would be taken in connection with the alleged debt, and when Defendant failed to identify themselves as a debt collection agency in communication with Plaintiff and failed to provide validation of the alleged debt or cease communication with Plaintiff upon request;

- g. Defendant violated § 1692e(11) of the FDCPA by failing to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and failing to disclose in subsequent communications that the communication is from a debt collector, when Defendant left a voicemail on Plaintiff's cellular telephone that did not disclose Defendant's identity as a debt collection agency;
- h. Defendant violated § 1692g(b) of the FDCPA by continuing to attempt to collect the alleged debt despite received a written notice from Plaintiff that the debt is disputed, and by failing to verify the debt and/or failing to mail said verification to Plaintiff; and
- i. Defendant violated § 1692g(b) of the FDCPA by engaging in collection activities and communication during the time period prescribed in § 1692g(a) and (b) that overshadowed or was inconsistent with the disclosure of the consumer's right to dispute the debt, when Defendant continued to attempt to collect the alleged debt from Plaintiff after Plaintiff orally disputed owing the alleged debt and requested Defendant stop calling Plaintiff;
- j. Defendant violated section 1006.14 of Regulation F of the FDCPA (12 CFR 1006.14) by placing more than seven telephone calls to Plaintiff within seven consecutive days; and
- k. Defendant violated § 1692(f) of the FDCPA by using fair or unconscionable means in connection with the collection of an alleged debt, when Defendant engaged in

the foregoing conduct.

WHEREFORE, Plaintiff, MATHEW HILLBURN, respectfully requests judgment be entered against Defendant, CREDIT COUNSEL INC., for the following:

1. Actual damages pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k to be determined at trial;
2. Statutory damages of \$1,000.00 per alleged debt attempted to be collected pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k;
3. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k; and
4. Any other relief that this Honorable Court deems appropriate.

RESPECTFULLY SUBMITTED,

December 4, 2023

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