

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

|                                     |   |                                 |
|-------------------------------------|---|---------------------------------|
| Amanda Patterson,                   | ) |                                 |
|                                     | ) |                                 |
| Plaintiff,                          | ) | Civil Action File No.:          |
|                                     | ) |                                 |
| vs.                                 | ) |                                 |
|                                     | ) | <b>COMPLAINT WITH</b>           |
| Merchants Adjustment Service, Inc., | ) | <b><u>JURY TRIAL DEMAND</u></b> |
|                                     | ) |                                 |
| Defendant                           | ) |                                 |

**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, Amanda Patterson, is a natural person who resides in Whitfield County, Georgia.

2. Defendant, Merchants Adjustment Service, Inc., is a foreign corporation registered to do business in Georgia. It can be served through its

registered agent, Corporation Service Company, 2 Sun Court, Suite 400, Peachtree Corners, Georgia 30092.

### **JURISDICTION AND VENUE**

3. 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.

4. 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.

5. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of Georgia because a substantial part of the events or omissions giving rise to the claims occurred in this district.

6. Venue is proper in the Rome Division because the conduct complained of herein occurred in Whitfield County, Georgia.

### **FACTUAL ALLEGATIONS**

7. Plaintiff is allegedly obligated to pay a consumer debt arising out of a deficiency arising out of a medical services debt and is, therefore, a "consumer", as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a collection agency specializing in the collection of consumer debt.

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

10. Defendant manages, and collects upon, thousands of consumer debt accounts annually.

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

12. The Plaintiff has fallen behind on a significant number of consumer debts, mostly medical expenses, as a result of a disability.

13. The Plaintiff has been contacted by a number of debt collectors seeking payment of various medical accounts, including the Defendant.

14. On April 13th, 2023, the Plaintiff initiated a call to the Defendant in an effort to obtain more information about the account in collection. At that time, she was connected with an individual identifying herself as “Tina Evans,” a representative of the Defendant.

15. After verifying the Plaintiff’s identity, the Defendant confirmed that it was collecting two accounts on behalf of Doctors Memorial Hospital located in Bonifay, Florida. The total, per the Defendant, was \$2,533.50.

16. One of the accounts, per the Defendant, originated from emergency services provided on March 18th, 2018.

17. The Plaintiff responded by advising the Defendant that she was enrolled in Medicaid as administered by the State of Florida at that time.

18. The Defendant replied by representing to the Plaintiff that for Medicaid to be applicable, the Plaintiff would have had to utilize it within 12 months and then to appeal if it was denied. The Defendant went on to state that the hospital had sent the Plaintiff bills, but that she had not responded intimating that the Plaintiff was in fact liable for these charges.

19. At the time of her treatment, both Doctors Memorial Hospital and the physicians contracting with that institution to provide emergency room services were participating in Florida's Medicaid program.

20. Under Florida law, the maximum liability the Plaintiff could face arising out of the emergency services provided by Doctors Memorial Hospital, and which provide the basis for the Defendant's collection action, is \$15.00. FLA.STAT. Section 409.9081(c).

21. The Defendant's representations to the Plaintiff asserting that she had liability for the debt in collection were objectively false and materially misleading.

22. The initial call between the Plaintiff and the Defendant was quickly followed by another from the Plaintiff. Her purpose in doing so was to request that the Defendant limit calls regarding the accounts in collection for a specific time period when such calls would be inconvenient for her.

23. Plaintiff was again connected with Tina Evans. In response to the Plaintiff's request that the Defendant limit any calls during the hours of 7:00 a.m. to 3:00 p.m., Ms. Evans advised that Defendant would not call. She went on to tell the Plaintiff that the account was already being reported to the Plaintiff's credit and that the "next step is legal." This call ended shortly thereafter.

24. The Plaintiff naturally concluded that she was subject to legal action as a result of this debt and, moreover, that because that was the "next step," that such action was imminent.

25. The statute of limitations for the collection of medical debt under the laws of the State of Florida is five years from the last payment activity or the date on the bill. FLA.STAT. Section 95.11(2)(b).

26. At the time the Defendant advised the Plaintiff that "legal" was the next step in the collection process, the statute of limitations providing for such relief had expired.

27. On September 19th, 2023, the Plaintiff obtained copies of her credit report as published by Transunion and Equifax, two major reporting credit bureaus. In reviewing those reports, the Plaintiff noted that on or about August 30th, 2023, the Defendant had reported the accounts described herein on behalf of Doctors Memorial Hospital as “charged off” and in collection.

28. Missing from the Defendant’s reporting to these particular bureaus was the critical information that the accounts had been disputed by the Plaintiff.

29. The Defendant’s communications to both Transunion and Equifax were in connection with, and designed to facilitate, collection of a consumer debt from the Plaintiff.

30. The information communicated by the Defendant to Transunion and Equifax was in turn published to third parties by the credit reporting bureaus in keeping with their respective business models.

31. It was incumbent upon Defendant to mark the account as disputed, both internally and in any reporting made to third parties.

32. Credit reporting is recognized as a powerful tool used to extract payment from consumer debtors. *Quale v. Unifund CCR Partners*, 682 F.Supp.2d 1274 (S.D. Ala. 2010)

### **INJURIES-IN-FACT AND DAMAGES**

33. 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.’” *McCamis v. Servis One, Inc.*, No. 8:16-CV-1130-T-30AEP, 2016 U.S. Dist. LEXIS 99492 (M.D. Fla. July 29, 2016); *Church v. Accretive Health, Inc.*, 654 Fed. Appx. 990, 2016 U.S. App. LEXIS 12414, 2016 WL 3611543 (11th Cir. 2016).

34. 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).

35. 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.

36. As a result of the Defendant’s 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.) Defendant's false and misleading communications to leading credit reporting bureaus were akin to defamation of the Plaintiff resulting in subscribers

to the credit reporting services receiving a false impression of Plaintiff's credit worthiness and debt-to-income ratio;

c.) Uncompensated time expended away from activities of daily living, to confer with counsel regarding the Defendant's collection efforts;

d.) Anxiety and worry caused by concern that Plaintiff was subject to imminent legal process; and,

e.) Anxiety and worry caused by concern that Plaintiff was being called upon to pay an improper claim and that Defendant was engaging in false credit reporting. The anxiety and worry experienced by the Plaintiff was sufficient to negatively affect her demeanor, her ability to engage in daily activities, resulted in sleeplessness, and adversely affected her relationships with others.

37. 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*



38. 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.

39. 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).

40. “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).

41. “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).

42. 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)

43. 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.

The Defendant's representations to the Plaintiff that she had liability for the amount in collection were objectively false and materially misleading and a violation of 15 U.S.C. §§ 1692e, 1692e(2)(A), and 1692e(10).

44. Defendant's representations or implications that led Plaintiff to believe that she may be subject to legal process in connection with the debt in collection was objectively false and or materially misleading. These representations and intimations were a violation of 15 U.S.C. §§ 1692e, 1692e(5) and 1692e(10).

45. The FDCPA specifically addresses communications from a debt collector as it relates to credit information and, specifically, prohibits “communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.” 15 U.S.C. § 1692e(8).

46. The Defendant’s failure to report the debt in collection as disputed is a violation of 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(8) and 1692e(10).

***Violations of 15 U.S.C. § 1692f and its subparts***

47. The conduct of the Defendant as described herein was unfair and unconscionable. It preyed upon the perceived lack of sophistication of the Plaintiff.

48. Defendant’s conduct violated 15 U.S.C. § 1692f.

**COUNT II**

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

49. Plaintiff incorporates by reference paragraphs 1 through 48 as though fully stated herein.

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

51. 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.

52. 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.

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

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

55. Defendant's conduct has implications for the consuming public in general.

56. Defendant's conduct negatively impacts the consumer marketplace.

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

58. As a result of Defendant'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).

59. As a result of Defendant'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).

60. As a result of Defendant'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).

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

### **TRIAL BY JURY**

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

WHEREFORE, Plaintiff prays that judgment be entered against Defendant 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 1<sup>st</sup> day of December, 2023.

**BERRY & ASSOCIATES**

*/s/ Matthew T. Berry*

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