

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

ASHLEIGH HARTHCOCK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:24-cv-212
	)	
PRIME RECOVERY, LLC, and	)	
ANTHONY LAGAMBINA, Individually,	)	
	)	
Defendants.	)	

**PLAINTIFF’S COMPLAINT**

Plaintiff, ASHLEIGH HARTHCOCK (“Plaintiff”), by and through her attorney, Michael Bertucci, alleges the following against Defendant, Prime Recovery LLC (“Prime Recovery”) and Anthony LaGambina (“LaGambina”), (collectively, “Defendants”):

**INTRODUCTION**

1. Count I of Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (“FDCPA”).
2. Count II of Plaintiff’s Complaint is based on the Mississippi Regulation of Business for Consumer Protection, § 75-24, et seq. (“MRBCP”).

**JURISDICTION AND VENUE**

3. This court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 15 U.S.C. § 1692k.
4. 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.”
5. This court has supplemental jurisdiction over the state law claim alleged herein pursuant to 28 U.S.C. § 1367(a) because it is “so related to claims in the action within such original

jurisdiction that they form part of the same case or controversy.”

6. 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**

7. Plaintiff is a natural person residing in the City of Oxford, Lafayette County, State of Mississippi.
8. Plaintiff is a consumer and a person as that term is defined by the FDCPA.
9. Plaintiff allegedly owes a debt as that term is defined by the FDCPA.
10. Defendants are debt collectors as that term is defined by the FDCPA.
11. Defendant Prime Recovery is a New York-organized limited liability company and national collection agency headquartered in the City of Niagara Falls, Niagara County, State of New York.
12. Defendant Prime Recovery is a business entity engaged in the collection of debt within the State of Mississippi.
13. Defendant LaGambina is the CEO, president, owner, director, and/or partner of Defendant Prime Recovery and regularly directs the business practices of Prime Recovery.
14. Upon information and belief, Defendant LaGambina is a citizen of the State of Florida and/or New York.
15. At all relevant times, acting alone or in concert with others, Defendant LaGambina has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Prime Recovery and its employees, including the acts and practices set forth in this Complaint.

16. Defendants' business includes, but is not limited to, collecting on unpaid, outstanding account balances.
17. The principal purpose of Defendants' business is the collection of debts allegedly owed to third parties.
18. Defendants regularly collects, or attempts to collect, debts allegedly owed to third parties.
19. During the course of their attempts to collect debts allegedly owed to third parties, Defendants send 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 text message.
20. Defendants acted through their agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
21. Employees can be held personally liable under the FDCPA. *Robinson v. Managed Accounts Receivable Corp.*, 654 F. Supp.2d 1051 (C.D. Cal. 2009); *See also, Schwarm v. Craighead*, 552 F. Supp.2d 1056 (E.D. Cal 2008).
22. Most courts that have addressed the issue have held that the corporate structure does not insulate shareholders, officers, or directors from personal liability under the FDCPA. *See Schwarm v. Craighead*, 552 F. Supp.2d 1056 (E.D. Cal 2008); *Kistner v. Law Offices of Michael P. Margelefsky, LLC*, 518 F.3d 433 (6th Cir. 2008); *Teng v. Metro. Retail Recovery, Inc.*, 851 F. Supp. 61 (E.D. NY 1994); *Del Campo v. Kennedy*, 491 F. Supp 2d 891 (N.D. Cal. 2006); *Brumbelow v. Law Offices of Bennett & Deloney, P.C.*, 372 F.Supp.2d 615 (D. Utah 2005); *Albanese v. Portnoff Law Associates, Ltd.*, 301 F.Supp.2d 389 (E.D. PA 2004); *Brink v. First Credit Res.*, 57 F.Supp.2d 848 (D.AR 1999); *Pikes v. Riddle*, 38 F.Supp2d 639 (N.D. IL 1998); *Ditty v. CheckRite*, 973 F.Supp. 1354 (D. Utah

1997).

23. Within the past one year, Defendants have attempted to collect an alleged debt from Plaintiff.

### **FACTUAL ALLEGATIONS**

24. Defendants are attempting to collect a consumer debt from Plaintiff.

25. The alleged debt owed arises from transactions for personal, family, and household purposes.

26. On or about August 7, 2023, Defendants began sending text messages to Plaintiff in an attempt collect the alleged debt from Plaintiff.

27. Defendant text Plaintiff on her mobile telephone at xxx-xx-5854, in an attempt to collect the alleged debt from Plaintiff.

28. Defendants texted Plaintiff from 231-281-3070, a phone number that belongs to Defendants.

29. On or about August 21, 2023, Defendants texted Plaintiff in regards to the recovery of the alleged debt, with the option to opt out of receiving text messages in regard to the collection of the alleged debt by replying "STOP".

30. On or about August 21, 2023, Plaintiff replied to Defendants' text messages "Stop". (Ex. A).

31. In response to Plaintiff's "stop" text message, Defendants replied on August 21, 2023 "You have successfully unsubscribed and will no longer receive test msgs", thus confirming Plaintiff's "stop" text was received. (Ex. A).

32. Despite Plaintiff's request to Defendants to stop texting Plaintiff, Defendants continued to text Plaintiff in an attempt to collect the alleged debt. Defendants texted Plaintiff regarding

this debt on August 22, 2023. (Ex. A).

33. Plaintiff did not send any text messages from xxx-xxx-5854 to Defendants other than the August 21, 2023 “stop” text.
34. The natural consequences of Defendants’ statements and actions was to produce an unpleasant and/or hostile situation between Defendants and Plaintiff.
35. The natural consequences of Defendants’ actions was to cause Plaintiff mental distress.
36. Defendants’ actions further constitute an invasion of Plaintiff’s individual privacy and Plaintiff has suffered a concrete and particularized injury to her legally protected interest of her individual privacy.

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37. Prime Recovery’s collectors were working within the scope of their employment when they communicated with Plaintiff.
38. During the course of collection efforts against Plaintiff, LaGambina acted in association with his company, Prime Recovery, regarding the conduct toward Plaintiff described above by presenting to Prime Recovery office(s) to work and by assisting Prime Recovery in obtaining revenue.
39. Prime Recovery was the avenue through which LaGambina, and Prime Recovery’s employees conducted their business operation, namely, debt collection.
40. LaGambina was responsible for setting the policies and procedures related to the collection practices of Prime Recovery’s employees and directed them to specifically act in the manner described above.
41. At all relevant times, acting alone or in concert with others, LaGambina has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of

Prime Recovery and its employees, including the acts and practices set forth in this Complaint.

42. During all times pertinent hereto, LaGambina:
43. Created the collection policies and procedures used by Prime Recovery, and its respective employees and agents, in connection with their common efforts to collect consumer debts;
44. Managed or otherwise controlled the daily collection operations of Prime Recovery;
45. Oversaw the application of the collection policies and procedures used by Prime Recovery and its employees and agents;
46. Drafted, created, approved and ratified the tactics and scripts used by Prime Recovery and its employees and agents to collect debts from consumers, including the tactics and scripts that were used to attempt to collect an alleged debt from Plaintiff as alleged above;
47. Ratified the unlawful debt collection practices and procedures used by Prime Recovery and its employees and agents in connection with their common efforts to collect consumer debts; and
48. Had knowledge of, approved, participated in, ratified and benefitted financially from the unlawful debt collection practices used by Prime Recovery and its employees and agents in attempts to collect an alleged debt from Plaintiff as alleged above.
49. Defendant LaGambina knew that Prime Recovery repeatedly or continuously engaged in collection practices.
50. Defendant LaGambina and Prime Recovery, and their respective agents and employees, knew that the representations made to Plaintiff were false, deceptive and misleading, and otherwise in violation of the FDCPA and MRBCP.

**COUNT I:  
DEFENDANTS VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

51. Defendants violated the FDCPA based on the following:

- a. Defendants violated § 1692d of the FDCPA by engaging in conduct that the natural consequences of which was to harass, oppress, and abuse Plaintiff in connection with the collection of an alleged debt when Defendants sent unlawful text messages to Plaintiff;
- b. Defendants further violated § 1692d of the FDCPA when Defendants continued to text Plaintiff after Plaintiff requested that Defendants stop texting her;
- c. Defendants violated § 1692d(5) of the FDCPA by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number when Defendants continued to text Plaintiff after Plaintiff requested that Defendants stop texting her;
- d. Defendants 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 Defendants created the false impression on Plaintiff that Defendants could violate the FDCPA with impunity;
- e. Defendants violated § 1692e(11) of the FDCPA when Defendants sent text messages to Plaintiff that did not state that the communications were an attempt to collect a debt; and
- f. Defendants violated § 1006.6(d)(5) of Regulation F by sending text messages to Plaintiff's telephone at her above-referenced mobile telephone number after she opted out of text message communications.

WHEREFORE, Plaintiff, ASHLEIGH HARTHCOCK, respectfully requests judgment be entered against Defendants, PRIME RECOVERY, LLC, and ANTHONY LAGAMBINA for the

following:

52. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k;
53. Actual damages, to be determined at trial, pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k;
54. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k; and
55. Any other relief that this Honorable Court deems appropriate.

**COUNT II:  
DEFENDANTS VIOLATED THE MISSISSIPPI REGULATION  
OF BUSINESS FOR CONSUMER PROTECTION**

56. When Defendants engaged in the foregoing misconduct, they committed unfair or deceptive acts or practices in the conduct of any trade or commerce.
57. As a result of Defendants' misconduct, Plaintiff suffered damages.

WHEREFORE, Plaintiff, ASHLEIGH HARTHCOCK, respectfully requests judgment be entered against Respondent, PRIME RECOVERY, LLC, and ANTHONY LAGAMBINA for the following:

58. Actual damages to be determined at trial; and
59. Any other relief that this Honorable Court deems appropriate.

By: /s/ Michael Bertucci  
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# EXHIBIT A

