

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

Kelse Gross,

Plaintiff,

v.

Portfolio Recovery Associates, LLC,

Defendant.

Case No.: 2:24-cv-2102

**COMPLAINT SEEKING DAMAGES FOR VIOLATIONS OF THE FAIR DEBT
COLLECTION PRACTICES ACT**

Plaintiff, Kelse Gross (“Plaintiff”), brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”), for a finding that Defendant Portfolio Recovery Associates, LLC’s (“Defendant”) collection actions violated the FDCPA, and to recover damages, and alleges:

I. PRELIMINARY STATEMENT AND INTRODUCTION

1. This is an action for actual and statutory damages, legal fees, and costs pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter referred to as the “FDCPA”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices. *Id.*

2. The purpose of the FDCPA is to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses. *Id.*

3. If a violation occurs, “the FDCPA is a strict liability statute that makes debt collectors liable for violations that are not knowing or intentional.” *Donohue v. Quick Collection, Inc.*, 592 F.3d 1027, 1030 (9th Cir. 2010).

4. Even a single violation of the FDCPA is sufficient to support liability. *Taylor v. Perrin, Landry, deLaunay, & Durand*, 103 F.3d 1232, 1238 (5th Cir. 1997).

II. JURISDICTION AND VENUE

5. This Court has concurrent jurisdiction of the FDCPA claim under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

6. Venue is proper in this Judicial District.

7. The acts and transactions alleged herein occurred in this Judicial District.

8. The Plaintiff resides in this Judicial District.

9. The Defendant transacts business in this Judicial District.

III. STANDING

10. Plaintiff has suffered an injury in fact that is traceable to Defendant's conduct and that is likely to be redressed by a favorable decision in this matter.

11. Specifically, Plaintiff suffered a concrete information injury as a result of Defendant's failure to provide truthful information in connection with its attempt to collect an alleged debt from Plaintiff. *Bellwood v. Dwivedi*, 895 F.2d 1521, 1526-27 (7th Cir. 1990) ("Congress can create new substantive rights, such as a right to be free from misrepresentations and if that right is invaded the holder of the right can sue without running afoul of Article III, even if he incurs no other injury[.]").

IV. PARTIES

12. Plaintiff is a natural person who resides in Johnson County, Kansas.

13. Plaintiff is a "consumer" as that term is defined by § 1692a.

14. Plaintiff is "any person" as that term is used in 15 U.S.C. § 1692d preface.

15. Defendant is a Delaware limited liability company that acts as a debt collector, as defined by § 1692a(6) of the FDCPA, because it regularly uses the mails and/or the telephone to collect, or attempt to collect, directly or indirectly, defaulted consumer debts originally owed to another.

16. Defendant regularly attempts to collect via credit reporting, directly or indirectly, debts owed or due or asserted to be owed or due another. Defendant also regularly attempts to collect debt via consumer collections lawsuits.

17. Defendant is a bad debt buyer that obtains/buys large portfolios of defaulted consumer debts for pennies on the dollar. Defendant's principal, if not sole, business purpose is the collection of defaulted consumer debts originated by others.

18. Defendant's registered agent in the State of Kansas is Corporation Service Company, 1100 SW Wanamaker Rd., Ste. 103, Topeka, KS 66604 (Exhibit A).

V. FACTUAL ALLEGATIONS

19. Plaintiff incurred a debt for personal and/or household purposes with Synchrony Bank (the "Debt").

20. Unfortunately, Plaintiff became unable to pay the Debt due to personal financial difficulties.

21. Sometime after the Debt went into default it was allegedly purchased or otherwise assigned to or obtained by Defendant, who then attempted to collect the Debt via negative credit reporting.

22. Defendant went even further by filing a lawsuit in the District Court of Johnson County, Kansas, Limited Actions Division, against Plaintiff in a matter styled, Portfolio Recovery

Associates, LLC v. Kelse Gross, and assigned with case number 23LA10456 (Exhibit B, the “State Court Lawsuit”).

23. Unsure about the Debt, and having never heard of Defendant, Plaintiff met with counsel to discuss his rights in the State Court Lawsuit.

24. Thereafter, on January 17, 2024, Plaintiff’s attorney filed Affirmative Defenses to the petition that Defendant had filed against her. In the answer to the complaint, Defendant asserted “Defendant disputes this debt.” in paragraph 11. (Exhibit C, the “Affirmative Defenses”).

25. Defendant received a copy of Plaintiff’s Affirmative Defenses from the State Court Lawsuit.

26. Later, on or about February 27, 2024, Plaintiff obtained and reviewed a copy of her Experian credit report and discovered that Defendant was continuing to report the Debt but had failed to note that the Debt was disputed. (Exhibit D, excerpt from Plaintiff’s Experian credit report).

27. As a result of Defendant’s failure to note that the Debt was disputed in its ongoing credit reporting to Experian, Plaintiff was forced to take an action to her detriment by going to the time and expense of having her attorney send Defendant a letter reminding Defendant that Plaintiff disputed the Debt that Defendant was credit reporting. (Exhibit E, “Counsel Letter”).

28. Before February 2024, Defendant knew, or should have known, that Plaintiff disputed the Debt.

29. Even though Defendant knew or should have known, prior to February 2024, that Plaintiff disputed the Debt, Defendant failed thereafter to communicate the fact of Plaintiff’s dispute to the Experian credit reporting agency when Defendant communicated other information regarding the Debt, in violation of 15 U.S.C. § 1692e(8).

30. 15 U.S.C. § 1692e of the FDCPA provides as follows:

False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

. . . (8) 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. . . .

31. Defendant should have communicated to Experian that the Debt was disputed so Plaintiff's credit report would accurately reflect such status.

32. Defendant's violations of the FDCPA were material because Defendant's failure to note that the Debt was disputed when Defendant reported, or continued to report, the Debt on Plaintiff's credit report harmed his credit reputation, impaired his credit rating and her ability to obtain credit.

33. Moreover, Defendant's failure to note, when reporting the Debt on Plaintiff's credit report, that the Debt was disputed made it appear to Plaintiff that she did not actually have the right to dispute the Debt. Defendant's collection actions alarmed, confused and emotionally distressed Plaintiff. Defendant's violations of the FDCPA impacted Plaintiff's credit score, and her credit reputation, as her credit report was later viewed by additional creditors/potential creditors.

34. Credit reporting by a debt collector constitutes an attempt to collect a debt. *See, e.g., Rivera v. Bank One*, 145 F.R.D. 614, 623 (D.P.R. 1993) (a creditor's report of a debt to a consumer reporting agency is a "powerful tool, designed in part to wrench compliance with payment terms from its cardholder").

35. Defendant materially lowered Plaintiff's credit score by failing to notate Plaintiff's dispute.

36. A debt reported with no dispute results in a much lower credit score than a report of both the debt and the dispute. Saunders v. Branch Banking and Trust Co. of VA, 526 F.3d 142, 146-47 (4th Cir. 2008).

37. "The plain language of § 1692e(8) requires debt collectors to communicate the disputed status of a debt if the debt collector "knows or should know" that the debt is disputed." Brady v. Credit Recovery Co., Inc., 160 F.3d 64, 67 (1st Cir. 1998).

38. "[I]f a debt collector *elects* to communicate 'credit information' about a consumer, it must not omit a piece of information that is *always material*, namely, that the consumer has disputed a particular debt." Wilhelm v. Credico, Inc., 519 F.3d 416, 418 (8th Cir. 2008).

39. "[T]he failure to inform a credit reporting agency that the debtor disputed his or her debt will *always* have influence on the debtor, as this information will be used to determine the debtor's credit score." Evans v. Portfolio Recovery Associates, 2018 U.S.App. LEXIS 11372 (7th Cir. 2018).

40. Defendant's collection communications are to be interpreted under the "unsophisticated consumer" standard. See Kalebaugh v. Berman & Rabin, P.A., No. 13-2288-DDC-TJJ, 2014 WL 4259150, at *5 (D. Kan. Aug. 28, 2014).

41. The FDCPA is a remedial statute that "should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F.3d 1107, 1117 (10th Cir. 2002).

42. All of Defendant's collection actions at issue in this matter occurred within one year of the date of this Complaint.

COUNT I
Violation of § 1692e of the FDCPA –

False or Misleading Representations

43. Plaintiff re-alleges the above paragraphs as if set forth fully in this count.

44. Defendant failed to communicate the fact of Plaintiff's dispute to the Experian credit reporting agency when Defendant communicated other information regarding the Debt, in violation of 15 U.S.C. § 1692e(8), despite having knowledge of Plaintiff's dispute.

45. Defendant's violation of § 1692e of the FDCPA renders it liable for actual and statutory damages, costs, and reasonable attorneys' fees, see, 15 U.S.C. § 1692k.

COUNT II
Violation Of § 1692f Of The FDCPA –
Unfair Or Unconscionable Collection Actions

46. Plaintiff re-alleges the above paragraphs as if set forth fully in this count.

47. Section 1692f of the FDCPA prohibits a debt collector from using any unfair or unconscionable means to collect or attempt to collect a debt, see, 15 U.S.C. § 1692f.

48. Defendant, by continuing to report the debt to a credit reporting agency, when it knew the debt was disputed by Plaintiff, and by failing to report that the debt was disputed, used unfair or unconscionable means to collect, or attempt to collect, debts, in violation of § 1692f of the FDCPA.

49. Defendant's violation of § 1692f of the FDCPA renders it liable for actual and statutory damages, costs, and reasonable attorneys' fees, see, 15 U.S.C. § 1692k.

JURY DEMAND

Plaintiff demands trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendant as follows:

- a. Statutory damages pursuant to 15 U.S.C. § 1692k(a)(2);
- b. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k(a)(3); and
- c. Such other or further relief as the Court deems proper.

Respectfully submitted,

Dated: March 21, 2024

By: /s/ James R. Crump

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