

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

DAVID DULUC,

Plaintiff,

v.

COLLECTION RECEIVABLES, INC.,

Defendant.

Case No: 1:24-cv 21221_____

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff David Duluc (“Plaintiff”) brings this Complaint by and through his attorneys, against the Defendant Collection Receivables, Inc. (“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.

JURISDICTION AND VENUE

3. 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).

4. 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

5. 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”).

6. Plaintiff is seeking damages and declaratory relief.

PARTIES

7. Plaintiff is a resident of the State of Florida, County of Miami-Dade.

8. Defendant is a “debt collector” as the phrase is defined in 15 U.S.C. § 1692(a)(6) and as used in the FDCPA with an address at 1835 Central Avenue, Augusta, Georgia, 30904.

9. 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

10. 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.

11. On a date better known to the original creditor Powerhouse Gym Lake Jackson (“Powerhouse”) and alleged debt was incurred.

12. Plaintiff disputes the existence of this debt in its entirety.

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

14. The alleged obligation is a “debt” as defined by 15 U.S.C. § 1692a(5).

15. Thus, Powerhouse is a “creditor” as defined by 15 U.S.C. § 1692a(4).

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

17. 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.

18. On or around April 4, 2023, Plaintiff’s brother received a call from the Defendant who left a voicemail.

19. After his brother informed him of the call, the Plaintiff called the Defendant on April 5, 2023, and stated that the Defendant should not call his brother and should instead call the Plaintiff and that the Plaintiff disputes the debt.

20. Additionally, during this call, Plaintiff informed Defendant that he disputes the debt because his membership was frozen when the alleged debt was created. A true and accurate copy of an email Plaintiff sent to Powerhouse is attached as Exhibit A, hereinafter “Email.”

21. However, on April 19, 2023, Plaintiff's brother received another call from the Defendant that left another voicemail.

22. Pursuant to 15 U.S.C. § 1692c:

Except as provided in section [15 USCS § 1692b], without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, **a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer,** his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

15 U.S.C. § 1692c(b) (emphasis added).

23. Defendant deliberately and intentionally called the Plaintiff's brother after the Plaintiff informed the Defendant to cease all further communications to the Plaintiff's brother.

24. 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.

25. Accordingly, Defendant violated multiple provisions of the FDCPA.

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

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

28. 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.

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

30. Plaintiff suffered various emotional harms including, but not limited to, increased heartrate, difficulty with sleep, anxiety, and stress associated with knowing that third parties may be receiving calls to collect on a debt alleged to be owed by Plaintiff, which Plaintiff disputes.

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

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

33. 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.

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

35. 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.

36. 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.

37. 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 his funds.

38. In reliance on Defendant's conduct, Plaintiff expended time and money in an effort to mitigate the risk of future financial and reputational harm.

39. Based on Defendant's FDCPA violations, Plaintiff expended time, money, and resources to prevent further improper conduct.

40. 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. § 1692c *et seq.*

41. Plaintiff incorporates by reference paragraphs 1-40 of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

42. 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. § 1692c.

43. Pursuant to 15 U.S.C. § 1692c(b), "a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer. . ."

44. Thus, Defendant violated 15 U.S.C. § 1692c:

- a. By calling Plaintiff's brother to collect on a debt after the Plaintiff gave explicit instructions to not contact this third party.

45. By reason thereof, Defendant is liable to Plaintiff for judgment in that Defendant's conduct violated 15 U.S.C. § 1692c *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.*

46. Plaintiff incorporates by reference paragraphs 1-40 of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

47. 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.

48. 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."

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

- a. By unfairly and unconscionably continuing to call the Plaintiff's brother to collect on a disputed debt despite the fact that the Plaintiff asked Defendant to stop calling his brother.

50. 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.

COUNT III
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. § 1692d *et seq.*

51. Plaintiff incorporates by reference paragraphs 1-40 of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

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

53. Pursuant to 15 U.S.C. § 1692d, a debt collector may not engage in any conduct the natural consequences of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

54. Defendant violated § 1692d:

- a) By ignoring Plaintiff's request and continuing to harass and oppressively call Plaintiff brother attempting to collect the alleged debt.

- b. By reason thereof, Defendant is liable to Plaintiff for judgment in that Defendant's conduct violated Section 1692d *et seq.* of the FDCPA, actual damages, statutory damages, costs, and attorneys' fees.

COUNT IV

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692e *et seq.*

55. Plaintiff incorporates by reference paragraphs 1-40 of this Complaint as though fully stated herein with the same force and effect as if the same were set forth at length herein.

56. Defendants' 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.

57. 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."

58. 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."

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

- a. By ignoring Plaintiff's request and continuing to harass and oppressively call Plaintiff brother attempting to collect the alleged debt.
- b. By continuing to collect this debt after Plaintiff disputed it in its entirety.
- c. By failing to maintain policies and procedures to avoid these violations from occurring.

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

DEMAND FOR TRIAL BY JURY

61. 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 David Duluc 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: April 2, 2024

Respectfully submitted,

/s/ Justin Zeig

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