

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
LANSING DIVISION**

KELLY BECK,)
)
 Plaintiff,)
)
 v.) No. 1:24-cv-450
)
 BENCHMARK SERVICES LLC,)
)
 Defendant.)

PLAINTIFF’S COMPLAINT

Plaintiff, KELLY BECK, by and through her attorneys, Agruss Law Firm, LLC, alleges the following against Defendant, BENCHMARK SERVICES LLC:

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 Michigan Occupational Code, Mich. Comp. Law 339.901 et seq. (“MOC”).

JURISDICTION AND VENUE

3. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, 1367, and 15 U.S.C. § 1692k (FDCPA).
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 claims alleged herein pursuant to 28 U.S.C. § 1367 as they are “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 Lansing, Ingham County, State of Michigan.
8. Plaintiff is a consumer as that term is defined by 15 U.S.C. § 1692a(3) and Mich. Comp. Law § 339.901(f).
9. Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. § 1692a(5) and Mich. Comp. Law § 339.901(a).
10. Defendant is a debt collector as that term is defined by 15 U.S.C. § 1692a(6) and Mich. Comp. Law § 339.901(b).
11. Within the last year, Defendant attempted to collect a consumer debt from Plaintiff and Plaintiff’s husband.
12. Defendant is a New York-organized limited liability company with its principal place of business in the independent city of East Elmhurst, State of New York.
13. Defendant’s business includes, but is not limited to, collecting on unpaid, outstanding account balances.
14. When an unpaid, outstanding account is placed with Defendant it is assigned a file number.
15. The principal purpose of Defendant’s business is the collection of debts allegedly owed to

third parties.

16. Defendant regularly collects, or attempts to collect, debts allegedly owed to third parties.
17. 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.
18. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

19. Defendant is attempting to collect a consumer debt from Plaintiff, allegedly owed by Plaintiff.
20. Plaintiff's alleged debt owed arises from transactions for personal, family, or household purposes.
21. In or around October 2023, Defendant began placing collection calls to Plaintiff and Plaintiff's husband in an attempt to collect the alleged debt.
22. Defendant calls Plaintiff on her cellular telephone at xxx-xxx-1373 in an attempt to collect the alleged debt.
23. Defendant calls Plaintiff's husband's cellular telephone at xxx-xxx-9423 in an attempt to collect the alleged debt.
24. Defendant calls Plaintiff and Plaintiff's husband from, at least, 866-350-5447, which is one of Defendant's telephone numbers.
25. Defendant also leaves voicemail messages for Plaintiff and Plaintiff's husband.
26. A true-and-correct transcription of one such message is as follows:

“This is a very important message from Benchmark Services. Please return our call at 866-350-5447 or press 1 to be connected to a live representative who can assist you. Again, this is a very important and time-sensitive call from Benchmark Services. Please contact 866-350-5447 to be connected. Have a great day.”

27. The above-referenced voicemail message does not qualify as a “limited-content message”, as defined by § 1006.2(j) of Regulation F because of the extraneous content not permitted by Regulation F.
28. Because the above-referenced voicemail message does not qualify as a “limited content message”, the voicemail message is required to disclose that Defendant was calling Plaintiff in an attempt to collect a debt pursuant to § 1692e(11) of the FDCPA.
29. With regard to the above-referenced voicemail message:
 - a. Defendant’s collector failed to disclose that the communication was made in an attempt to collect a debt; and
 - b. Defendant’s collector made vague and veiled threats with unnecessary and confusing statements and innuendo, creating a false sense of urgency.
30. The natural consequences of Defendant’s actions was to produce an unpleasant and/or hostile situation between Defendant and Plaintiff.
31. The natural consequences of Defendant’s actions was to cause Plaintiff mental distress.

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

32. Defendant violated the FDCPA based on the following:
 - a. Defendant violated § 1692c(a)(2) of the FDCPA by continuing to call Plaintiff and Plaintiff’s husband despite knowing that they were represented by an attorney regarding the alleged debt;

- b. Defendant violated § 1692c(c) of the FDCPA by continuing to call Plaintiff and Plaintiff's husband despite receiving a written cease-and-desist request from Plaintiff and her husband's counsel;
- c. 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 engaged in all of the foregoing misconduct;
- d. 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's collectors failed to state that the communication was an attempt to collect a debt when leaving voicemail messages for Plaintiff;
- a. Defendant violated § 1692e(10) 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's collectors failed to state that the communication was an attempt to collect a debt when leaving voicemail messages for Plaintiff;
- b. Defendant violated § 1692e(11) of the FDCPA when Defendant's collectors failed to state that the communication was an attempt to collect a debt when leaving voicemail messages for Plaintiff; and
- e. Defendant violated § 1692f of the FDCPA by its use of unfair or unconscionable means to collect or attempt to collect any debt when Defendant engaged in all of the foregoing misconduct.

WHEREFORE, Plaintiff KELLY BECK, respectfully requests judgment be entered against BENCHMARK SERVICES LLC, for the following:

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

**COUNT II:
DEFENDANT VIOLATED THE
MICHIGAN OCCUPATIONAL CODE**

33. Plaintiff repeats and re-alleges paragraphs 1-29 of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

34. The foregoing acts and omissions of Defendant constitute numerous and multiple violations of the MOC including, but not limited to, the following:

- a. Defendant violated § 339.915(g) of the MOC by communicating with a debtor without accurately disclosing the caller's identity, as detailed above.

WHEREFORE, Plaintiff, KELLY BECK, respectfully requests judgment be entered against Defendant, BENCHMARK SERVICES LLC, for the following:

- a. Actual damages pursuant to the Michigan Occupational Code, Mich. Comp. Law § 339.916(2);
- b. Statutory damages of \$150.00 pursuant to the Michigan Occupational Code, Mich. Comp. Law § 339.916(2);
- c. Costs and reasonable attorneys' fees pursuant to the Michigan Occupational Code, Mich. Comp. Law § 339.916(2); and

d. Any other relief that this Honorable Court deems appropriate.

Date: May 01, 2024

Respectfully submitted,
MIKE AGRUSS LAW

By: /s/ Michael S. Agruss

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