FILED
CLERK, U.S. DISTRICT COURT
07/10/2024
CENTRAL DISTRICT OF CALIFORNIA
BY: AP DEPUTY

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

FEE PAID

I/S
NO CV30

TERRENCE PAYNE
PLAINTIFF,

v.

MIDLAND CREDIT MANAGEMENT, INC.,
DEFENDANT.

CASE No. 5:24-cv-01429-SSS(SHKx)

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual, statutory damages, and costs brought by Plaintiff Terrence Payne, an individual consumer, against Defendant Midland Credit Management, Inc. ("Midland"), for violations of the Fair Debt Collection Practices Act, 15 U.S.C § 1692 *et seq*. (hereinafter "FDCPA"), which prohibits debt collectors, such as Midland from engaging in abusive, deceptive, and unfair practices, such as Mr. Payne.

II. JURISDICTION AND VENUE

2. Jurisdiction of this court arises under 15 U.S.C § 1692k(d) and 28 U.S.C 1331. Venue in this District is proper in that the Defendant transact business in Riverside County, California and the conduct complained of occurred in Riverside County, California.

III. PRELIMINARY STATEMENT

3. The Fair Debt Collection Practices Act (hereinafter "FDCPA") has existed since 1977 to prevent abusive practices in collecting consumer debts.

4. Regulation F was introduced much later to refine and enforce these practices further.

5. While the FDCPA provides the foundation for consumer protections related to debt collection, it has some limitations. For instance, it does not include extensive provisions for new modes of communications, like electronic mail (hereinafter "email") or social media.

6. Regulation F was introduced by the Consumer Financial Protection Bureau (CFPB) as an updated set of rules that supplement and detail requirements under the FDCPA. It aims to adapt to changes in how debtors and collectors communicate due to technological advances and provide clear rules to prevent legal ambiguity.

7. The purpose of Regulation F is not to replace the FDCPA but to fortify and modernize it. It gives consumers more clarity and agency when interacting with debt collectors while allowing the collection industry to operate effectively.

8. **Regulation F § 1006.6 Communications in connection with debt collection. (b) Communications with a consumer - (1) Prohibitions regarding unusual or inconvenient times or places.** Except as provided in paragraph (b) (4) of this section, a debt collector must not communicated or attempt to communicate with a consumer in connection with the collection of any debt:

Official interpretation of 6(b)(1) Prohibitions regarding unusual or inconvenient time or places.

1. Designation of inconvenience. Section 1006.6(b)(1) prohibits a debt collector from, among other things, communicating or attempting to communicate with a consumer in connection with the collection of any debt at a time or place that the debt collector knows or should know is inconvenient to the consumer, unless an exception in § 1006.6(b)(4) applies. For example, a debt collector knows or should know that a time or place is inconvenient to a consumer if the consumer uses the word "inconvenient" to notify the debt collector. In addition, depending on the facts and circumstances, the debt collector knows or should know that a time or place is inconvenient even if the consumer does not specifically state to the debt collector that a time or place is "inconvenient." The debt collector may ask follow-up questions regarding whether a time or place is convenient to clarify statements by the consumer. For example:

iii. Assume that a consumer tells a debt collector not to communicate with the consumer at a particular place, such as the consumer's home. The debt collector asks whether the consumer intends to prohibit the debt collector from communicating with the consumer through all media associated with the consumer's home, including, for example, mail. Absent such additional information, the debt collector knows or should know that communications to the consumer at home, including mail to the consumer's home address and calls to the consumer's home landline telephone number, are inconvenient. Thereafter, unless the consumer informs the debt collector that the place is no longer inconvenient, § 1006.6(b)(1)(ii) prohibits the debt collector from communicating or attempting to communicate with the consumer at the consumer's home. See comment 6(b)(1)(ii)–1 for additional guidance regarding communications or attempts to communicate at an inconvenient place.

9. **Regulation F § 1006.14 Harassing, Oppressive, or abusive conduct. (h) Prohibited communication media— (1) In general.** In connection with the collection of any debt, a debt collector must not communicate or attempt to communicate with a person through a communication medium if the person has requested that the debt collector not use that medium to communicate with the person.

10. **15 U.S.C § 1692c Communication in connection with debt collection** (a)

Communication with a consumer generally. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location.

IV. ARTICLE III STANDING

11. Article III standing to bring his FDCPA claim against Midland Credit Management, Inc. because Midland Credit Management, Inc., communications in an attempt to collect an alleged debt constituted an unwanted intrusion upon his solitude, seclusion, and peace and quiet, which are common law analogues to the FDCPA violations asserted below. ***See Vazzano v. Receivable Mgmt. Servs., LLC,*** **621 F. Supp. 3d 700, 709 (N.D. Tex. 2022) (receiving an unwanted letter "has a 'close relationship' to the type of harm protected by the common law tort of intrusion upon seclusion (protecting against intrusion into private solitude))** (citing *TransUnion LLC v. Kennethrez*, —— U.S. ——, 141 S. Ct. 2190, 2204 (2021)) (also citing *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 462 (7th Cir. 2020) (Barrett, J.) ("The harm posed by unwanted text messages is analogous to that type of intrusive invasion of privacy.")).

12. Midland Credit Management, Inc., collection efforts with respect to the alleged debt caused Mr. Payne to suffer concrete and particularized harm, *inter alia*, because the

FDCPA provides Mr. Payne with the legally protected right not to be misled about the legal status of a debt or treated unfairly with respect to any action for the collection of any consumer debt.

13. Moreover, the emotional distress Mr. Payne experienced sufficient concrete injury to establish Article III standing. See *Mayfield v. LTD Fin. Servs., L.P.*, No. 4:20-CV-01966, 2021 WL 4481089, at *4 (S.D. Tex. Sept. 30, 2021) (citing *Rideau v. Keller Indep. Sch. Dist.*, 819 F.3d 155, 169 (5th Cir. 2016) ("[E]motional harm satisfies the 'injury in fact' requirement of constitutional standing.")) (additional internal quotation marks omitted); *see also* Smith v. Moss Law Firm, P.C., No. 18-2449, 2020 WL 584617, at *5 (N.D. Tex. Feb. 6, 2020) ("legal costs, anxiety, and worry" caused by defendant's alleged FDCPA violation were concrete and particularized injuries for purposes of FDCPA claim).

COMMUNICATION

14. The FDCPA defines communication as "the conveying of information regarding a debt directly or indirectly to any person through any medium." 15 U.S.C. §1692a(2) (emphasis added).

V. PARTIES

15. Plaintiff Terrence Payne (hereinafter "Mr. Payne") is a natural person residing in Moreno Valley, California. Mr. Payne is a consumer as defined by the Fair Debt Collection Practices Act, 15 U.S.C. §1692a(3).

16. Upon information and belief, Midland Credit Management, Inc. is a California corporation with its principal place of business located at 350 Camino De La Reina, Suite

300, San Diego, California 92108.

17. Defendant Midland Credit Management, Inc., is engaged in the collection of debt from consumers using the mail and telephone. Defendant' regularly attempts to collect consumers' debts alleged to be due to another's.

18. Defendant Midland Credit Management, Inc., (hereinafter referred to as "Debt Collector") is a "debt collector" as defined by the FDCPA, 15 U.S.C 1692a(6).

19. The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment, as defined by the FDCPA, 15 U.S.C 1692a(5).

VI. FACTS OF THE COMPLAINT

20. On March 17, 2024, Plaintiff reviewed his credit report and observed tradelines from Defendant Midland with the following Account Numbers: 307553*** amounting to $1,239.00 and 308585*** amounting to $873.00. Plaintiff further noticed that inaccuracies were reported on these accounts.

21. Plaintiff's dispute letters were dispatched with USPS tracking numbers of 9589071052700778856448 and 9589071052700778856431 respectively.

22. Plaintiff sent his dispute letters dated March 17, 2024 for the following accounts with Account Numbers: 307553*** amounting to $1,239.00 and 308585*** amounting to

$873.00

23. In the said letters, Plaintiff expressed disagreement with the balance reelected on his Midland accounts as portrayed on his credit report. Additionally, he conveyed his perception that the current economic conditions present significant challenges and questioned the fairness of the Defendant's demand for the full amount to be paid.

24. Plaintiff also explicitly stated in the dispute letters his refusal to pay the debt at this time and emphasized that he is not currently requesting debt validation, specifically expressing "I will not pay the debt."

25. Furthermore, Plaintiff informed Defendant Midland that his preferred method of communication was via email exclusively, during the hours of 9:00AM TO 12:00PM Pacific Time, Monday through Friday, and Plaintiff provided his email address.

26. Plaintiff received postal mail from Defendant Midland dated April 17, 2024 referring to the account with Account Number 307553*** which also has an Internal Legal Account Number 22-123630 with a current balance of $1,239.68.

27. Defendant's letter stated the following details regarding the account: Original Creditor for this account is Credit One Bank, N.A., Date Account Opened is June 15, 2018, Date of Last Payment is January 31, 2020, Charge Off Balance is $1,239.68, Current Balance is $1,239.68 and Date Account Charged Off is $August 28, 2020.

28. Defendant also mentioned that their letter addresses the recent communication challenging the accuracy of their records concerning the disputed account. Defendant

mentioned that in response to the Plaintiff's dispute, information pertaining to the account is still being provided to consumer reporting agencies and that they will notify these three major consumer reporting agencies that the account is under dispute.

29. Defendant violated 15 U.S. Code § 1692c(a)(1) for communicating with the Plaintiff using a method Defendant knew was no longer convenient for Plaintiff thereby embarrassing Plaintiff in front of his family and friends.

30. By disregarding Plaintiff's clear instructions, Defendant failed to adhere to the statutory requirements outlined in the FDCPA. This failure to comply resulted in continued communication with the Plaintiff, and have caused undue harassment and distress to Plaintiff.

31. On April 11 and April 18, 2024, Plaintiff sought individual sessions therapy. He conveyed that Defendant actions had exacerbated his anxiety and severely disrupted his eating and sleeping patterns. These events significantly impacted the Plaintiff's mental health, overall well-being, and stability.

32. As a direct and proximate result of Defendant's alleged unlawful conduct listed above, Plaintiff has suffered, and continues to suffer, damages, including, but not limited to: intrusion upon his seclusion, anger, anxiety, decreased ability to focus on tasks while at work, frustration, severe emotional distress, and other negative emotions and physical manifestations thereof, including, but not limited to, headaches.

VII. FIRST CLAIM FOR RELIEF
Fair Debt Collection Practices Act
15 U.S. Code § 1692c(a)(1)

33. Plaintiff re-alleges and reincorporates all previous paragraphs as if fully set out herein.

34. Defendant Midland has inappropriately contacted Plaintiff by communicating with him at a place Defendant knew was no longer convenient to Plaintiff. This action disregarded Plaintiff's circumstances and preferences, potentially causing inconvenience or discomfort.

35. Defendant Midland violated the FDCPA.

36. Defendant violated the provisions of 15 U.S. Code § 1692c(a)(1) of the FDCPA by communicating a debt collection without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, where a debt collector may not communicate with a consumer:

> (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer.

37. As a result of the above violations of the FDCPA, Defendant Midland is liable to Plaintiff actual damages, statutory damages and costs.

VIII. SECOND CLAIM FOR RELIEF
12 CFR Part 1006 - Fair Debt Collection Practices Act
Regulation F § 1006.14 and Regulation F § 1006.6(b)(1)

38. Plaintiff re-alleges and reincorporates all previous paragraphs as if fully set out herein.

39. Defendant Midland violated the FDCPA.

40. Defendant violated the provisions of Regulation F § 1006.14 by communicating or

attempting to communicate with a person through a communication medium if the person has requested that the debt collector not use that medium to communicate with the person.

41. As a result of the above violations of the FDCPA, Defendant Midland is liable to Plaintiff actual damages, statutory damages, and costs..

IX. JURY DEMAND AND PRAYER FOR RELIEF

WHEREFORE, Plaintiff Terrence Payne respectfully demands a jury trial and requests that judgment be entered in favor of Plaintiff and against Defendant Midland Credit Management, Inc. :

A. Judgment for the violations occurred for violating the FDCPA;
B. Actual damages pursuant to 15 U.S.C 1692k(1)(2) and §1788.30(a);
C. Statutory damages pursuant to 15 U.S.C 1692k(2);
D. Demand amount is $6,500.00; and
E. For such other and further relief as the Court may deem just and proper.

Dated: July 10, 2024

Respectfully submitted:

Terrence Payne

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