UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO.: 6:24-cv-1508

ALISA CONNELL,

Plaintiff,

v.

NORTH AMERICAN CREDIT
SERVICES, INC.,

Defendant.
_____________________________________/

DEFENDANT, NORTH AMERICAN CREDIT SERVICES, INC.'S PETITION FOR REMOVAL WITH SUPPORTING MEMORANDUM OF LAW

COMES NOW, the Defendant, North American Credit Services, Inc. ("NACS"), by and through its undersigned counsel, and respectfully petitions this Honorable Court for removal of the above-styled civil action from the Circuit Court, in and for Orange County, Florida, to the United States District Court for the Middle District of Florida, Orlando Division, and states as follows:

1. Defendant, North American Credit Services, Inc. is the named Defendant in a civil action brought against it in the Circuit Court, in and for Orange County, Florida, styled: *Alisa Connell, individually, and on behalf of those similarly situated V. North American Credit Services, Inc., Case No.:*

2024-CA-006519-O. A copy of the Complaint served in that action, in addition to all process and pleadings served upon NACS, will be docketed separately by the Clerk.

2. That the aforesaid action was filed with the Clerk of the Circuit Court in Orange County and service of process of said Summons and Complaint, was served upon the Defendant, NACS, on August 5, 2024.

3. That the controversy herein between the Plaintiff and Defendant is a controversy based upon consumer protection rights created by and enforced through federal statutes. In this case, Plaintiff attempts to bring a pleading for alleged violations of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA").

4. That the above-described action is a civil action of which this Court has original jurisdiction under the provisions of Title 28, United States Code, §1331, and is one which may be removed to this Court by the Defendant/Petitioner pursuant to the provisions of Title 28, United States Code, §1441(a), in that it is a civil action based upon a federal question over which this Court has original jurisdiction. Further, this Petition for Removal is being submitted to this Court within 30 days after service on NACS of the original Complaint in the above-styled action and is, therefore, timely pursuant to 28 U.S.C. §1446(b).

WHEREFORE, NACS respectfully requests that this Honorable Court enter its order removing the entire case from the Circuit Court, in and for Orange County, to the United States District Court, Middle District of Florida, Orlando Division.

MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR REMOVAL

Statement of the Case and Facts

The instant suit is a civil action that includes a federal question, specifically, a claim that the Defendant, North American Credit Services, Inc. ("NACS") allegedly violated Plaintiff's consumer protection rights under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"). The Complaint seeks an award of damages against the Defendant for alleged actions taken during the course of alleged debt collection attempts by the Defendant against the Plaintiff, which is asserted to violate the FDCPA. Plaintiff seeks statutory, actual, and/or punitive damages and seeks judgment for those damages against the Defendant for this alleged conduct.

Federal Court Jurisdiction

This Court has jurisdiction of this case pursuant to 28 U.S.C. §1331. Section 1331 states as follows:

"§1331. Federal question.

> *The federal district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.*

The complaint herein raises a federal question and satisfies the jurisdictional requirements of 28 U.S.C. §1331. This Honorable Court, therefore, has original jurisdiction of this civil action.

Removal

This is an action which may properly be removed to this Court pursuant to 28 U.S.C. §1441 which states in pertinent part as follows:

> *"Except as otherwise expressly provided by act of Congress, any civil action brought in a state court of which the district courts of the United States has original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending . . . "*

Given that this action is one over which the United States District Court for the Middle District of Florida, Orlando Division, would have original jurisdiction, this case may properly be removed by Defendant pursuant to 28 U.S.C. §1446(a) which provides:

> *"A defendant or defendants desiring to remove any civil action or criminal prosecution from a state court shall file in the district court of the United States for the district and division within which such action is pending a Notice of Removal, signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with*

a copy of all process, pleadings and orders served upon such defendant or defendants in such action."

In the instant suit, NACS has filed a Notice which complies with 28 U.S.C. §1446(a), in that it sets forth facts that show that this Court has original jurisdiction and that this case is subject to removal.

Timeliness of Removal

28 U.S.C. §1446(b) requires that a Notice of Removal in a civil action or proceeding shall be filed within thirty (30) days after receipt by Defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based. Additionally, each defendant shall have thirty (30) days after receipt by service on that defendant of the initial pleading or summons to file the notice of removal. Here, the original Complaint was filed with the Court and subsequently served upon NACS on August 5, 2024. Accordingly, this Petition for Removal is being submitted to this Court less than thirty (30) days from service of the Complaint on Defendant.

Supplemental Jurisdiction

This Court has the discretion to exercise supplemental jurisdiction over any state law claims that have been asserted as part of the underlying action. 28 U.S.C. §1441(c) provides as follows:

> "Whenever a separate and independent claim or cause of action within the jurisdiction conferred by §1331 of this Title, is joined within one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which state law predominates."

As such, all claims made by Plaintiff for violations of state statutes will have arisen out of the same factual allegations as the claims under the FDCPA.

Demand For Jury Trial

Defendant demands trial by jury regarding any issues of fact and law that remain following the ruling on any dispositive motions filed herein. Defendant estimates that a trial will take 1-2 days.

Conclusion

For the foregoing reasons, this Honorable Court should grant Defendant, North American Credit Services, Inc.'s Petition and enter an order removing the entire case from the Circuit Court, in and for Orange County, to the United States District Court, Middle District of Florida, Orlando Division.

Dated this **19th day of August 2024.**

Respectfully submitted,

/s/ Ernest H. Kohlmyer, III
Ernest H. Kohlmyer, III, Esq., LL.M.

Florida Bar No. 110108
skohlmyer@shepardfirm.com
service@shepardfirm.com
Shepard, Smith, Kohlmyer & Hand, P.A.
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751
Telephone (407) 622-1772
Facsimile (407) 622-1884
Attorneys for Defendant, North American Credit Services, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been electronically filed on **August 19, 2024**, with the Clerk of the Court by using the electronic filing system. I further certify that the foregoing has been sent via electronic transmission to the following: Jibrael S. Hindi, Esquire, Zance C. Hedaya, Esquire, and Gerald D. Lane, Jr., Esquire at jibrael@jibrael@jibraellaw.com, zane@jibraellaw.com, and gerald@jibraellaw.com *(Attorneys for Plaintiff).*

/s/ Ernest H. Kohlmyer, III
Ernest H. Kohlmyer, III, Esq., LL.M.
Florida Bar No.: 110108
skohlmyer@shepardfirm.com
service@shepardfirm.com
Shepard, Smith, Kohlmyer & Hand, P.A.
2300 Maitland Center Parkway, Suite 100
Maitland, Florida 32751

Telephone (407) 622-1772
Facsimile (407) 622-1884
Attorneys for Defendant, North American Credit Services, Inc.

**IN THE CIRCUIT COURT OF THE 9TH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

ALISA CONNELL,
individually and on behalf of all those similarly situated,

Plaintiff,

v.

NORTH AMERICAN CREDIT SERVICES INC,

Defendant.

_______________________________________/

CLASS ACTION COMPLAINT

Plaintiff Alisa Connell ("Plaintiff"), *individually and on behalf of all those similarly situated*, sues Defendant North American Credit Services Inc ("Defendant") for violations of the Fair Debt Collection Practices Act ("FDCPA") and Florida Consumer Collection Practices Act ("FCCPA").

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over Plaintiff and Defendant (collectively, the "Parties"), because the cause of action arises within the jurisdiction of this Court and, thus, venue and jurisdiction are proper.

2. This Court has personal jurisdiction over Defendant because Defendant is operating, present, and/or doing business within this jurisdiction and because the complained of conduct of Defendant occurred within Orange County, Florida.

3. The amount in controversy exceeds $50,000.00, exclusive of costs, interest, and attorneys' fees, and is otherwise within this Court's jurisdiction.

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4. Venue of this action is proper in this Court because, pursuant to Fla. Stat. § 47.011, et seq., the cause of action alleged below arose in Orange County, Florida.

5. Plaintiff has standing to maintain this action because Plaintiff suffered a legal injury as a result of Defendant's violations of the FDCPA and FCCPA, and because Plaintiff is not requesting an advisory opinion from this Court. Thus, Plaintiff has a sufficient stake in a justiciable controversy and seeks to obtain judicial resolution of that controversy.

PARTIES

6. Plaintiff is a natural person, and a citizen of the State of Florida, residing in Orange County, Florida.

7. Defendant is a Tennessee corporation, with its principal place of business located in Chattanooga, Tennessee.

DEMAND FOR JURY TRIAL

8. Plaintiff, respectfully, demands a trial by jury on all counts and issues so triable.

FACTUAL ALLEGATIONS

9. On a date better known by Defendant, Defendant began attempting to collect a debt (the "Consumer Debt") from Plaintiff.

10. The Consumer Debt is an obligation allegedly had by Plaintiff to pay money arising from a transaction between the creditor of the Consumer Debt and Plaintiff (the "Subject Service").

11. The Subject Service was primarily for personal, family, or household purposes.

12. According to Defendant's website, Defendant has an ACA Certified team that's mastered the science of healthcare collections.

13. A print-out of Defendant's website is attached hereto as Exhibit "A."

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14. Defendant is a business entity engaged in the business of soliciting consumer debts for collection.

15. Defendant is a business entity engaged in the business of collecting consumer debts.

16. Defendant regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

17. Defendant is registered with the Florida Office of Financial Regulation as a "Consumer Collection Agency."

18. Defendant's "Consumer Collection Agency" license number is CCA0900472.

19. Defendant maintains all the records specified in Rule 69V-180.080, Florida Administrative Code.

20. The records specified by Rule 69V-180.080, Florida Administrative Code, of which Defendant does maintain, are current to within one week of the current date.

21. For example, Defendant does not maintain and keep updated within seven (7) days the records required by, *inter alia*, Florida Administrative Code Rule 180.080(1), (3), (6), (7), (9), (10), and (11).

22. Further, Defendant has written policies and procedures for the secure handling of all consumer documents and information received in the course of collecting a debt from a consumer as required by Rule 69V-180.090(2).

23. Defendant is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6).

24. Defendant is a "person" within the meaning of Fla. Stat. § 559.72.

The Communications

25. On or about September 26, 2023, Defendant sent Plaintiff a text message (the "Text Message Communication") in an attempt to collect the Consumer Debt from Plaintiff.

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26. On or about October 6, 2023, Plaintiff replied to the Defendant "Please Do Not Contact Me…" to indicate to Defendant that it should cease any further communication in regards to the Consumer Debt.

27. Defendant received the Text Message Communication on or about October 6, 2023.

28. Upon receipt of the Text Message Communication, Defendant knew that it could not communicate with Plaintiff directly in connection with the collection of the Consumer Debt.

29. Attached as Exhibit "B" is a copy of the Text Message Communication.

30. On or about October 12, 2023 and October 31, 2023, despite knowing that Plaintiff had requested Defendant to cease communication with her, Defendant called Plaintiff (the "First Subject Communications") in an attempt to collect the Consumer Debt.

31. Attached as Exhibit "C" is a copy of the First Subject Communications.

32. On or about November 21, 2023, December 11, 2023, and January 10, 2024, despite knowing that Plaintiff had requested Defendant to cease communication with her, Defendant called Plaintiff again and left a voicemail (the "Second Subject Communications") in an attempt to collect the Consumer Debt.

33. Attached as Exhibit "D" is a copy of the Second Subject Communications.

34. On or about January 30, 2024, February 12, 2024, February 20, 2024, and March 6, 2024, despite knowing that Plaintiff had requested Defendant to cease communication with her, Defendant called Plaintiff (the "Third Subject Communications") in an attempt to collect the Consumer Debt.

35. Attached as Exhibit "E" is a copy of the Third Subject Communications.

36. The First Subject Communications, the Second Subject Communications and Third Subject Communications are collectively referred to as the "Subject Communications."

37. The Subject Communications caused Plaintiff to suffer mental anguish, emotional distress, embarrassment and shame, loss of enjoyment of life, depression, anxiety, loss of appetite and energy, sleep disturbance and loss of sleep, loss of concentration, and fear of potential legal action.

38. The wasted time and/or money spent in evaluating the legal ramifications of Defendant's collection efforts in the Subject Communications was a concrete harm suffered by Plaintiff. *See Toste v. Beach Club at Fontainebleau Park Condo. Ass'n,, Aventura, P.A., 2022 U.S. App. LEXIS 25076* (11th Cir. Sept. 7, 2022).

CLASS ALLEGATIONS

Proposed Class

39. Plaintiff brings this lawsuit as a class action on behalf of Plaintiff, individually and on behalf of all other similarly situated persons as a class action. Plaintiff seeks to represent the below-defined "FDCPA Class" and "FCCPA Class" (collectively, "Classes").

40. The **"FDCPA Class"** consists of [1] all consumers with United States addresses [2] who received phone calls [3] from Defendant, or someone on Defendant's behalf [4] in an attempt to collect a debt [5] during the twelve (12) months preceding the filing of this Class Action Complaint [6] whereby said phone calls were received by the consumer after the consumer requested Defendant to cease communication with the consumer in violation of 15 U.S.C. § 1692c(c).

41. The **"FCCPA Class"** consists of [1] all consumers with Florida addresses [2] who received phone calls [3] from Defendant, or someone on Defendant's behalf [4] in an attempt to collect a debt [5] during the twenty-four (24) months preceding the filing of this Class Action

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Complaint [6] whereby said phone calls were received by the consumer after the consumer requested Defendant to cease communication in violation of Fla. Stat. § 559.72(7).

42. Defendant and its employees or agents are excluded from the Classes.

43. Plaintiff does not know the number of members in the Classes but believes the members of the Classes to be in the several thousands, if not more.

NUMEROSITY

44. Upon information and belief, Defendant has made thousands of debt collection phone calls to consumers throughout the United States after the consumer requested Defendant to cease communication with the consumer. The members of the FDCPA Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

45. Upon information and belief, Defendant has made thousands of debt collection phone calls to consumers throughout Florida after the person requested Defendant to cease communication with the consumer. The members of the FCCPA Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

46. The exact number and identities of members of the Classes are unknown at this time and can be ascertained only through discovery. Identification of each member of the Classes is a matter capable of ministerial determination from Defendant's records.

COMMON QUESTIONS OF LAW AND FACT

47. There are numerous questions of law and fact common to the FDCPA Class which predominate over any questions affecting only individual members of the FDCPA Class. Among the questions of law and fact common to the FDCPA Class are: [1] Whether Defendant made a phone call to Plaintiff and members of the FDCPA Class in an attempt to collect a debt; [2] Whether Defendant is a debt collector; [3] Whether Defendant, by and through said phone calls,

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violated the FDCPA; **[4]** Whether Defendant is liable for damages, and the amount of such damages; and **[5]** Whether Defendant should be enjoined from such conduct in the future.

48. There are numerous questions of law and fact common to the FCCPA Class which predominate over any questions affecting only individual members of the FCCPA Class. Among the questions of law and fact common to the FCCPA Class are: **[1]** Whether Defendant made a phone call to Plaintiff and members of the FCCPA Class in an attempt to collect a debt; **[2]** Whether Defendant is a "person" within the meaning of Fla. Stat. § 559.72; **[3]** Whether Defendant, by and through said phone calls, violated the FCCPA; **[4]** Whether Defendant is liable for damages, and the amount of such damages; and **[5]** Whether Defendant should be enjoined from such conduct in the future.

49. The common questions in this case are capable of having common answers. If Plaintiff's claims that Defendant routinely sends debt collection phone calls to consumers that violate the FDCPA and the FCCPA are accurate, Plaintiff and members of the Classes will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

50. Plaintiff's claims are typical of the claims of the members of the Classes, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

51. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Classes and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes.

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SUPERIORITY

52. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all members of the Classes is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by members of the Classes are in the millions of dollars, the individual damages incurred by each member of the Classes resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual members of the Classes prosecuting their own separate claims is remote, and, even if every member of the Classes could afford individual litigation, the court system would be unduly burdened by individual litigation.

53. The prosecution of separate actions by members of the classes would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Classes, although certain class members are not parties to such actions.

COUNT 1
VIOLATION OF 15 U.S.C. § 1692c(c)
(For Plaintiff and the FDCPA Class)

54. Plaintiff, individually and on behalf of the FDCPA Class, incorporates by reference paragraphs 9-40, 42-44, 46-47, and 49-53 of this Class Action Complaint as though fully stated herein.

55. Pursuant to 15 U.S.C. § 1692c(c), "if a consumer notifies a debt collector in writing that the consumer wishes the debt collector to *cease further communication* with the consumer, the debt collector *shall not communicate further* with the consumer with respect to such debt" (emphasis added).

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56. On or about October 6, 2023, Defendant was notified in a text message (the "Text Message Communication") that Plaintiff wished for Defendant to cease communication with her with respect to the debt.

57. The text message stated: "Please Do Not Contact Me…"

58. Defendant knew Plaintiff requested Defendant to cease communication with Plaintiff. Despite knowing this, Defendant communicated and/or contacted Plaintiff, by and through the Subject Communications, in connection with the collection of the Consumer Debt.

59. Accordingly, Defendant violated 15 U.S.C. § 1692c(c) by communicating directly with Plaintiff in connection with the collection of the Consumer Debt via the Subject Communications.

60. WHEREFORE, Plaintiff, respectfully, requests this Court to enter a judgment against Defendant, awarding Plaintiff the following relief:

(a) Statutory damages as provided by 15 U.S.C. §1692k;

(b) Costs and reasonable attorneys' fees pursuant to 15 U.S.C. §1692k; and

(c) Any other relief that this Court deems appropriate under the circumstances.

COUNT 2
VIOLATION OF FLA. STAT. § 559.72 (7)
(For Plaintiff and the FCCPA Class)

61. Plaintiff, individually and on behalf of the FCCPA Class, incorporates by reference paragraphs 9-39, 41-43, 45-46, and 48-53 of this Class Action Complaint as though fully stated herein.

62. Section 559.72, Fla. Stat., of the FCCPA contains nineteen subsections and otherwise codifies an extensive list of acts and/or omissions. Accordingly, in collecting consumer debts, pursuant to the FCCPA, no person shall: "[w]willfully *communicate with the debtor* or any

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www.JibraelLaw.com

member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or *willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor* or any member of her or his family." Fla. Stat. § 559.72(7) (emphasis added).

63. As stated above, Defendant knew Plaintiff had revoked any consent Defendant had to communicate with Plaintiff and that Defendant was not to contact Plaintiff. As of October 6, 2023, Defendant knew it could not communicate with Plaintiff in connection with the Consumer Debt.

64. Despite knowing this, Defendant communicated and/or contacted Plaintiff via phone call, by and through the Subject Communications, in connection with the collection of the Consumer Debt.

65. In doing so, Defendant willfully communicated with Plaintiff in such a way that can be reasonably expected to harass or abuse Plaintiff. As such, by and through the Subject Communications, Defendant violated Fla. Stat. § 559.72(7).

66. WHEREFORE, Plaintiff, respectfully, requests this Court to enter a judgment against Defendant, awarding Plaintiff the following relief:

(a) Statutory damages as provided by 15 U.S.C. §1692k;

(b) Costs and reasonable attorneys' fees pursuant to 15 U.S.C. §1692k; and

(c) Any other relief that this Court deems appropriate under the circumstances.

LAW OFFICES OF JIBRAEL S. HINDI, PLLC
110 SE 6th Street, 17th Floor | Ft. Lauderdale, Florida 33301 | Phone (954) 907-1136 | Fax (855) 529-9540
www.JibraelLaw.com

DATED: July 22, 2024

Respectfully Submitted,

/s/ Gerald D. Lane, Jr.
JIBRAEL S. HINDI, ESQ.
Florida Bar No.: 118259
E-mail: jibrael@jibraellaw.com
ZANE C. HEDAYA, ESQ.
Florida Bar No.: 1048640
E-mail: zane@jibraellaw.com
GERALD D. LANE, JR., ESQ.
Florida Bar No.: 1044677
E-mail: gerald@jibraellaw.com
The Law Offices of Jibrael S. Hindi
110 SE 6th Street, Suite 1744
Fort Lauderdale, Florida 33301
Phone: 954-907-1136

COUNSEL FOR PLAINTIFF