IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION CASE NO.

LISSETTE GORDON,

Plaintiff,

v.

LVNV FUNDING LLC AND

CREDIT CONTROL LLC.,

Defendants.

______________________________/

FILED BY ______ D.C.

SEP 18 2024

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMI

COMPLAINT

Comes Now, Plaintiff LISSETTE GORDON, brings this action against LVNV FUNDING LLC and CREDIT CONTROL LLC hereinafter (The Defendants). Plaintiff respectfully alleges violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692a-p ("FDCPA") and the Florida Consumer Collection Practices Act, Florida Statute § 559.551 ("FCCPA").

JURISDICTION AND VENUE

1. Jurisdiction for this court is conferred by 28 U.S.C. § 1331, specific federal jurisdiction under 15 U.S.C. § 1692k(d) and supplemental jurisdiction under 28 U.S.C. § 1367.
2. Venue is proper in that the Defendants regularly conduct business in Miami-Dade County, Florida, and the State of Florida as a whole and the conduct complained of occurred in Miami-Dade County, Plaintiff's County of residence.

PARTIES

3. Plaintiff is a natural person and resident of Miami-Dade County, Florida and is a "consumer" as defined by 15 U.S.C. § 1692a(3).
4. Plaintiff is allegedly obligated to pay a "Debt" as defined by 15 U.S.C. § 1692a(5).
5. Upon information and belief, Defendant LVNV FUNDING LLC is a South Carolina corporation registered to do business in the State of Florida by the Florida Department of State, Division of Corporations, with its registered agent, Corporation Service Company, located at 1201 Hays St, Tallahassee, FL 32301.
6. Upon information and belief, Defendant CREDIT CONTROL, LLC is a Missouri corporation registered to do business in the State of Florida by the Florida Department of State, Division of Corporations, with its registered agent, CT Corporation System, located at 1200 South Pine Island Road, Plantation, FL 33324.
7. The Defendants regularly collect debts from consumers using mail, email, telephone, and/or other interstate instrumentalities and regularly attempt to collect consumer debts alleged to be due to other companies under contracts or agreements with such original holders or debt holders.
8. The Defendants are "Debt Collectors" as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

9. On or about March 6, 2024, Plaintiff requested, received, and reviewed a copy of her credit report from Equifax and a copy of her credit report from Transunion. [Exhibit 1]
10. On both the Equifax and Transunion copies of her credit report, the Plaintiff noticed a tradeline furnished by the debt collector Defendant LVNV.

11. LVNV furnished to Equifax and Transunion a tradeline with an alleged amount of $1,814, allegedly owed to SYNCHRONY BANK SAM'S CLUB on Plaintiff's Equifax and Transunion reports as disputed.
12. Furnisher means an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report. as defined by 12 CFR 1022.41(c).
13. Plaintiff does not recall ever disputing the alleged LVNV SYNCHRONY BANK SAM'S CLUB account.
14. On April 9, 2024, Plaintiff mailed LVNV a certified letter (7022 2410 0001 1721 0260) stating that Plaintiff no longer disputed the account and requested the dispute remark be removed. [Exhibit 2]
15. LVNV received Plaintiff's certified letter on April 13, 2024, at 10:18 AM in Greenville, SC. [Exhibit 3]
16. LVNV removed the dispute remark sometime thereafter.
17. On or about May 16, 2024, Plaintiff noticed an inaccuracy with the alleged SYNCHRONY BANK SAM'S CLUB account and contacted LVNV via telephone, the same day, May 16, 2024, to dispute the account in question (for the first time).
18. Plaintiff informed LVNV's agent that she "disagreed with the balance owed" on the account in question.
19. On or about July 11, 2024, Plaintiff re-checked her credit reports and observed that despite LVNV and Transunion communicating information about the account on June 4, 2024, as reflected in Plaintiff's July 11, 2024, credit report, LVNV failed to communicate to Transunion that the account was disputed. [Exhibit 4]

20. On June 28, 2024, Plaintiff received a letter from Resurgent Capital Services attempting to collect an alleged debt on behalf of LVNV, allegedly owed to Capital One. [Exhibit 5]

21. On July 18, 2024, Plaintiff mailed Resurgent a certified letter (7022 2410 0001 1721 0284) stating that she did not have any money and therefore refused to pay the alleged debt. [Exhibit 6]

22. Resurgent received Plaintiff's certified letter on July 22, 2024, at 12:06 PM in Greenville, SC. [Exhibit 7]

23. On or about July 30, 2024, Credit Control mailed a letter to Plaintiff, which was received by Plaintiff shortly thereafter, Reference # 47365526, in an attempt to collect the alleged debt on behalf of LVNV. [Exhibit 8]

24. The letter stated "*Credit Control, LLC is a debt collector. We are trying to collect a debt you owe to LVNV Funding LLC.*"

25. Upon information and belief, Defendant LVNV provided Defendant Credit Control with all account information related to Plaintiff's file with LVNV, including any refusal to pay notices.

26. Defendants' actions have caused Plaintiff to suffer from mental stress, headaches, sleeplessness, and worry for the future.

COUNT 1

LVNV's VIOLATION OF FDCPA 15 U.S.C. § 1692e(8)

27. Plaintiff incorporates by reference paragraphs 1-26 of this Complaint as though fully stated herein.

28. LVNV had a duty under 15 U.S.C. § 1692e(8) not to report any false or misleading representations about Plaintiff.

29. When LVNV furnished to Transunion and Equifax that Plaintiff disputed the LVNV Synchrony Bank Sam's Club account on Plaintiff's March 6, 2024, credit reports, LVNV breached this duty by making false and misleading representations about Plaintiff because Plaintiff had not yet disputed the account.

30. LVNV had a duty under 15 U.S.C. § 1692e(8) to report a debt they "knew or should have known" was disputed by Plaintiff in any subsequent communications with the consumer reporting agencies.

31. LVNV breached this duty by failing to report Plaintiff's May 16, 2024, dispute to Transunion as listed in Plaintiff's subsequent July 11, 2024, Transunion credit report despite LVNV having communicated with Transunion on June 4, 2024, after LVNV "knew or should have known" the debt to be disputed by Plaintiff.

32. A consumer stating "the amount reported is not accurate." is a clear violation § 1692e(8) *See Evans v. Portfolio Recovery Assocs., LLC,* 889 F.3d 337 (7th Cir. 2018).

33. LVNV's publishing of such inaccurate, incomplete and misleading information has severely damaged the personal and credit reputation of Plaintiff and has caused Plaintiff to suffer from credit denial, humiliation, emotional distress, sleeplessness, mental anguish and low FICO scores.

34. LVNV materially lowered Plaintiff's credit score by failing to note Plaintiff's account as being in dispute.

35. A debt reported without dispute results in a much lower credit score than a report of both the debt and the dispute. *See Saunders v. Branch Banking and Trust Co. Of VA*, 526 F. 3d 142, 146-47 (4^{th} Cir. 2008).

36. Defendant LVNV is held strictly liable for its acts as the FDCPA is a strict liability statute. *See Taylor v. Perrin, Landry, deLaunay & Durand,* 103 F.3d 1232 (5^{th} Cir. 1997).

37. § 1692k(c), states that a debt collector may not be held liable if it shows error despite the measures implemented, by a preponderance of the evidence, which is a question of fact, to be determined by the presentation of such evidence.

38. In Evans, the Seventh Circuit did not apply the bona fide error defense because the debt collector made a mistake of law. *See Evans v. Portfolio Recovery Assocs., LLC,* 889 F.3d 337 (7th Cir. 2018).

39. As a result of violation of the FDCPA, Plaintiff is entitled to any:

- Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- Statutory damages for knowing or willful violations in the amount up to $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and
- Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3)

COUNT 2
LVNV's VIOLATION OF FCCPA FLORIDA STATUTES § 559.72(6)

40. Plaintiff incorporates by reference paragraphs 1-26 of this Complaint as though fully stated herein.

41. LVNV had a duty under Fl Stat § 559.72(6) to report a debt they "knew to be reasonably disputed" by Plaintiff in any subsequent communications with the consumer reporting agencies.

42. LVNV breached this duty by failing to report Plaintiff's May 16, 2024, dispute to Transunion as listed in Plaintiff's subsequent July 11, 2024, Transunion credit report despite LVNV have communicated with Transunion on June 4, 2024, after LVNV "knew" the debt to be reasonably disputed by Plaintiff.

43. Fl Stat § 559.77(3), states that a debt collector may not be held liable if it shows error despite the measures implemented, by a preponderance of the evidence, which is a question of fact, to be determined by the presentation of such evidence.

44. In Evans, the Seventh Circuit did not apply the bona fide error defense because the debt collector made a mistake of law. *See Evans v. Portfolio Recovery Assocs., LLC,* 889 F.3d 337 (7th Cir. 2018).

45. LVNV's publishing of such inaccurate, incomplete and misleading information has severely damaged the personal and credit reputation of Plaintiff and has caused Plaintiff to suffer from credit denial, humiliation, emotional distress, sleeplessness, mental anguish and low FICO scores.

46. LVNV materially lowered Plaintiff's credit score by failing to note Plaintiff's account as being in dispute.

47. A debt reported without dispute results in a much lower credit score than a report of both the debt and the dispute. *See Saunders v. Branch Banking and Trust Co. Of VA*, 526 F. 3d 142, 146-47 (4th Cir. 2008).

48. The foregoing acts and omissions constitute a violation of the FCCPA pursuant to Florida Statutes § 559.72(6)

49. "*Prohibited practices generally.—In collecting consumer debts, no person shall:*

   [...]

   (6) Disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing that fact. [...]"

50. As a result of a violation of the FCCPA, Plaintiff is entitled to recovery of:

   - Actual damages;
   - Statutory damages in the amount up to $1,000 per violation; and

- Reasonable attorney's fees and costs pursuant to Florida Statutes §559.77(2)

COUNT 3
LVNV's VIOLATION OF FDCPA 15 U.S.C. § 1692c(c)

51. Plaintiff incorporates by reference paragraphs 1-26 of this Complaint as though fully stated herein.

52. Defendant LVNV, through Defendant Credit Control, violated the FDCPA by employing Credit Control as its agent, who then sent Plaintiff a letter in an attempt to collect a debt on behalf of LVNV, with actual knowledge of a cease communication sent by the debtor to LVNV in violation of 15 U.S.C. § 1692c(c).

53. Defendant LVNV did not contact Plaintiff for a reason listed under the exemptions provided in 15 U.S.C. 1692c(c)(1), (2) or (3).

54. Defendant LVNV is held strictly liable for its acts as the FDCPA is a strict liability statute. *See Taylor v. Perrin, Landry, deLaunay & Durand,* 103 F.3d 1232 (5th Cir. 1997).

55. Defendant Credit Control, LLC was/is a debt collector under the FDCPA and an agent of LVNV attempting to collect a debt by its own admissions in the letter dated July 30, 2024, Reference # 47365526. "*We are trying to collect a debt that you owe to LVNV Funding LLC*" sent to Plaintiff. [Exhibit 4].

56. The letter dated July 30, 2024, Reference # 47365526 sent by Defendant Credit Control and received by Plaintiff violated 15 U.S.C. § 1692c(c).

57. Defendant LVNV is held strictly liable under the FDCPA for failure to maintain procedures to prevent § 1692c(c) violations.

58. § 1692k(c) on its face requires debt collectors to maintain procedures to avoid any errors "[maintenance of procedures to any such error]"

59. Defendant LVNV is responsible for the acts of its agent, Defendant Credit Control, under vicarious liability. *See Pollice v. National Tax Funding, L.P.* 225 F.3d 379 (3d Cir. 2000).

60. Defendant LVNV had a duty to monitor the activities of those it enlists to collect debts on its behalf *Id. Pollice,* and as such had a duty to monitor the collection practices of Credit Control, under the FDCPA.

61. Defendant LVNV's actions have caused Plaintiff to suffer from mental stress, headaches, sleeplessness, and worry for the future.

62. Plaintiff has suffered actual damages from mental stress, headaches, sleeplessness and worry for the future.

63. As a result of Defendant LVNV's violation of the FDCPA, Plaintiff is entitled to:

- Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- Statutory damages for a knowing or willful violation in the amount up to $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and
- Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3).

<u>COUNT 4</u>

<u>CREDIT CONTROL LLC's VIOLATION OF FDCPA 15 U.S.C. § 1692c(c)</u>

64. Plaintiff incorporates by reference paragraphs 1-26 of this Complaint as fully stated herein.

65. Defendant Credit Control, LLC was/is a debt collector under the FDCPA and an agent of LVNV attempting to collect a debt by its own admissions in the letter dated July 30, 2024, Reference # 47365526. "*We are trying to collect a debt that you owe to LVNV Funding LLC*" sent to Plaintiff. [Exhibit 4].

66. Defendant Credit Control is held strictly liable for its acts as the FDCPA is a strict liability statute. *See Taylor v. Perrin, Landry, deLaunay & Durand,* 103 F.3d 1232 (5th Cir. 1997).

67. Furthermore, the FDCPA is a remedial statute and therefore must be construed liberally in favor of the debtor. *See Sprinkle v. SB&C Ltd.*, 472 F. Supp. 2d 1235 (W.D. Wash. 2006).

68. Defendant Credit Control contacted Plaintiff (in an attempt to collect a debt) after a written refusal to pay notice was sent by the debtor to LVNV with Credit Control having actual knowledge of the cease communication notice, in violation of 1692c(c).

69. Aside from being held strictly liable, see infra. Defendant Credit Control, a debt collector, was/is required to implement and maintain procedures reasonably adapted to avoid violations, including cease communication violations.

70. Cease communication restrictions apply not only to one debt collector but also to any and all debt collectors trying to collect on the same debt. In this regard, *See. Clark v. Capital Credit Collection Serv*, 460 F.3d 1162, 1172 (9th Cir. 2006).

71. Plaintiff does not need to show intent in Credit Control's violation. *See Russell v. Equifax A.R.S,* 74 F.3d 30 (2d Cir. 1996).

72. Defendant Credit Control is held strictly liable for violating § 1692c(c) unless Credit Control shows by a preponderance of evidence its error, despite the reasonably enforced methods to prevent such violation.

73. The foregoing acts and omissions constitute a violation of 15 U.S.C. § 1692c(c) for Credit Control attempting to collect the alleged debt on behalf of LVNV despite having actual knowledge of Plaintiff's refusal to pay sent to LVNV.

74. Defendant Credit Control's actions have caused Plaintiff to suffer from mental stress, headaches, sleeplessness, and worry for the future.

75. Plaintiff has suffered actual damages from mental stress, headaches, sleeplessness and worry for the future.

76. As a result of the violation of the FDCPA, Plaintiff is entitled to any:

- Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- Statutory damages for a knowing or willful violation in the amount up to $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and
- Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3).

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that judgment be entered against the Defendants as follows:

1. A declaratory judgment that Defendant LVNV violated the FDCPA and FCCPA;
2. A declaratory judgment that Defendant Credit Control violated the FDCPA;
3. Award Plaintiff actual damages pursuant to 15 U.S.C. § 1692k(a)(1) for Defendant LVNV's violations of the FDCPA;
4. Award Plaintiff statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A) for Defendant LVNV's violations of the FDCPA;
5. Award Plaintiff actual damages pursuant to Fla. Stat. §559.77(2) for Defendant LVNV's violation of the FCCPA;
6. Award Plaintiff statutory damages pursuant to Fla. Stat.§559.77(2) for Defendant LVNV's violation of the FCCPA;
7. Award Plaintiff punitive damages to be determined at trial pursuant to Fla. Stat. §559.77(2) for Defendant LVNV's violation of the FCCPA;
8. Award Plaintiff actual damages pursuant to 15 U.S.C. § 1692k(a)(1) for Defendant Credit Control's violation of the FDCPA;
9. Award Plaintiff statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A) for Defendant Credit Control's violation of the FDCPA;

10. Award Plaintiff costs pursuant to 15 U.S.C. § 1692k(a)(3) and Fla. Stat. §559.77(2); and
11. Award Plaintiff any other relief, including equitable relief, that this honorable Court deems appropriate.

Respectfully submitted,

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September 17, 2024