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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Meghan Perez, Plaintiff, v. Thunderbird Collection Specialists, Inc., Defendant.	Case No.: **COMPLAINT**

INTRODUCTION

1. This is an action brought by an individual consumer for violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff is an individual residing in Maricopa County, AZ.

5. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

6. Defendant Thunderbird Collection Specialists, Inc. was at all relevant times engaged in the business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

7. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

8. At relevant times, Defendant alleged that Plaintiff was obligated to pay a debt (the "account").

9. The account arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, residential lease charges.

10. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts.

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

12. In October 2023, Defendant first contacted Plaintiff in effort to collect the account from her.

13. She spoke with Defendant's agents and/or employees, who represented that she owed approximately $7,700.

14. Plaintiff asked for an explanation of what the account was for and for written documentation that she was responsible for that balance.

15. Defendant stated Plaintiff would need to email them to request that information.

16. So Plaintiff sent Defendant an email, and then another to follow up, which were not returned.

17. On October 23, 2023, Defendant's agent and/or employee "Sean" called Plaintiff in effort to collect the account.

18. Sean told Plaintiff time was up and that they would start taking more severe action if not paid by 5pm.

19. Plaintiff explained to Sean that she had previously spoken with a supervisor, Michael, who was supposed to provide her with paperwork.

20. Subsequently, Sean began threatening and cursing at Plaintiff, referring to her as a "bitch" and a "cunt," and using other harassing language.

21. Sean also stated he increased the amount Plaintiff owed to $13,000.

22. When Plaintiff protested, he increased the amount allegedly owed even more.

23. Plaintiff terminated the phone call and immediately called back to speak with a supervisor.

24. Defendant's supervisor stated the original amount allegedly owed was $3,259, but that it was increased by 50% because of "your negligence."

25. Plaintiff requested that the other agent Sean never contact her again, and Defendant responded that they have an attorney looking for judgment information, and that they would be garnishing Plaintiff's wages instead of accepting payment plans.

26. Plaintiff continued to demand that Defendant locate any written information and provide it to her, and that she does not agree she is or ever was responsible for paying the alleged account.

27. As a result of Defendant's harassing efforts to collect the outstanding debt alleged due, Plaintiff suffered personal humiliation, embarrassment, mental anguish, emotional distress, detriment to Plaintiff's character and personal reputation, and other damages.

28. The personal humiliation, embarrassment, mental anguish, emotional distress, detriment to Plaintiff's character and personal reputation, and other damages that Plaintiff suffered was a natural consequence of Defendant's harassing efforts to collect the outstanding debt alleged due.

29. The personal humiliation, embarrassment, mental anguish, emotional distress, detriment to Plaintiff's character and personal reputation, and other damages that Plaintiff suffered as a result of Defendant's harassing efforts to collect the outstanding debt alleged due constitute mental anguish more than mere worry, anxiety, vexation, inconvenience, or unpleasantness.

COUNT I

(Fair Debt Collection Practices Act Violation – 15 U.S.C. § 1692d)

30. Plaintiff re-alleges and reaffirms the above paragraphs as though fully set forth herein.

31. Congress enacted the FDCPA in order to eliminate "abusive debt collection practices by debt collectors [and] to insure that those debt collectors who refrain from using

abusive debt collection practices are not competitively disadvantaged." *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1179-80 (9th Cir. 2006) (citing 15 U.S.C. § 1692(e)).

32. To protect consumers and ensure compliance by debt collectors, "the FDCPA is a strict liability statute." *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 948 (9th Cir. 2011).

33. Strict liability enhances "the remedial nature of the statute," and courts are "to interpret it liberally" to protect consumers. *Clark*, 460 F.3d at 1176.

34. In addition, by making available to prevailing consumers both statutory damages and attorneys' fees, Congress "clearly intended that private enforcement actions would be the primary enforcement tool of the Act." *Baker v. G.C. Servs. Corp.*, 677 F.2d 775, 780-81 (9th Cir. 1982); *see also Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109, 1118 (9th Cir. 2014).

35. Violations of the FDCPA are assessed under the least sophisticated consumer standard which is "'designed to protect consumers of below average sophistication or intelligence,' or those who are 'uninformed or naïve,' particularly when those individuals are targeted by debt collectors." *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1061 (9th Cir. 2011) (quoting *Duffy v. Landberg*, 215 F.3d 871, 874-75 (8th Cir. 2000)).

36. The FDCPA strictly prohibits harassing conduct in the course of debt collection, broadly providing: "A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." 15 U.S.C. § 1692d.

37. "Violations of § 1692d involve 'tactics intended to embarrass, upset, or frighten a debtor.'" *Hoover v. Monarch Recovery Mgt., Inc.*, 888 F. Supp. 2d 589, 596 (E.D. Pa. 2012) (quoting *Donatelli v. Warmbrodt,* 2011 WL 2580442, at *9 (W.D.Pa. June 28, 2011)).

38. "Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . . "The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader." 15 U.S.C. § 1692d(2).

39. Such offensive language might encompass name-calling, racial or ethnic slurs, and other derogatory remarks which are similar in their offensiveness to obscene or profane remarks. This is in keeping with one of the purposes of the FDCPA '[t]hat every individual, whether or not he owes the debt, has a right to be treated in a reasonable or civil manner.'" *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1178 (11th Cir. 1985) (quoting 123 Cong.Rec. 10241 (1977)).

40. Defendant violated 15 U.S.C. § 1692d by using obscene and profane language meant to harass and abuse Plaintiff during the course of its attempts to collect an alleged debt from Plaintiff.

COUNT II

(Fair Debt Collection Practices Act Violation – 15 U.S.C. § 1692e)

41. Plaintiff re-alleges and reaffirms the above paragraphs as though fully set forth herein.

42. The FDCPA creates a broad, flexible prohibition against the use of misleading, deceptive, or false representations in the collection of debts. *See* 15 U.S.C. § 1692e; *Hamilton v. United Healthcare of Louisiana, Inc.*, 310 F.3d 385, 392 (5th Cir. 2002) (citing legislative history reference to the FDCPA's general prohibitions which "will enable the courts, where appropriate, to proscribe other improper conduct which is not specifically addressed").

43. Included as an example of conduct that violates section 1692e is the false representation of the character, amount, or legal status of a debt. 15 U.S.C. § 1692e(2)(A).

44. Thus, the plain language of the FDCPA makes it clear that under the strict liability framework, any false representation as to the amount of the debt is sufficient to show a violation of the FDCPA. *See Randolph v. IMBS, Inc.*, 368 F.3d 726, 730 (7th Cir. 2004) ("§ 1692e(2)(A) creates a strict-liability rule. Debt collectors may not make false claims, period."); *see also Turner v. J.V.D.B. & Associates, Inc.*, 330 F.3d 991, 995 (7th Cir. 2003) ("under § 1692e ignorance is no excuse").

45. The FDCPA also prohibits "[t]he threat to take any action that cannot legally be taken or that is not intended to be taken." 15 U.S.C. § 1692e(5).

46. "Parties often knowingly make threats of illegal action, hoping that the threat will intimidate the opposing party, who may not take comfort from the prospect of years of expensive and uncertain litigation to vindicate her rights. Such threats can have real effects. The FDCPA in general, and § 1692e(5) in particular, are aimed directly at such tactics in the context of collecting consumer debts, where power and resources are often, let us say, asymmetrical." *Captain v. ARS Nat. Servs., Inc.*, 636 F. Supp. 2d 791, 796 (S.D. Ind. 2009).

47. Under the same general prohibition of false, misleading, or deceptive debt collection practices, the FDCPA includes a catchall prohibition on "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt. . . ." 15 U.S.C. § 1692e(10).

48. Defendant violated 15 U.S.C. § 1692e by using false, deceptive, or misleading representations or means in connection with the collection of a debt, including misrepresenting the amount of debt Plaintiff allegedly owed, by imposing false time constraints on Plaintiff in order to coax or pressure her into paying a debt she did not believe she owed, and by making false threats of legal action.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks a reasonable and fair judgment against Defendant for noncompliance of the Fair Debt Collection Practices Act and seeks remedies as defined by 15 U.S.C. § 1692 and demands:

1. Trial by jury.
2. Adjudging that Defendant violated the FDCPA;
3. Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;
4. Awarding Plaintiff actual damages to be proven at trial, pursuant to 15 U.S.C. § 1692k(a)(1);

5. Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

6. Any further legal and equitable relief as the court may deem just and proper in the circumstances.

Dated: October 21, 2024

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