FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

MAY 2 0 2025

KEVIN P. WEIMER, Clerk
By: Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Eric Martincek, *pro se* Plaintiff, v. Lloyd & McDaniel, PLC Bank of America, N.A. Defendants	Case No. 1:25-CV-2788

COMPLAINT WITH JURY TRIAL DEMAND

INTRODUCTION

1. This is an action brought by a consumer for Defendant Lloyd & McDaniel, PLC's violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692e(10) ("FDCPA") and against Defendants Lloyd & McDaniel, PLC and Bank of America, N.A. for fraud by deceit under O.C.G.A. § 51-6-2, based on willful misrepresentations made in support of a debt collection lawsuit.

2. Defendant Lloyd & McDaniel, PLC violated 15 U.S.C. § 1692e(10) by submitting a false and misleading affidavit in connection with the collection of a consumer debt to support a lawsuit against Plaintiff. Thereby using deceptive means in an attempt to collect a consumer debt.

3. Defendants committed fraud by deceit by willful misrepresentation through submission of a false and misleading affidavit to support a lawsuit against Plaintiff. This willful misrepresentation of material fact accompanied by damages gives the Plaintiff a right of action per Georgia statute OCGA § 51-6-2.

JURISDICTION

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this action arises under the laws of the United States, specifically the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. The Court has supplemental jurisdiction over Plaintiff's related state law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this Court because a substantial part of the events giving rise to the claim occurred in Georgia, including the filing of the lawsuit and submission of the affidavit, pursuant to 28 U.S.C. § 1391.

PARTIES

6. Plaintiff Eric Martincek, is a natural person residing in Gwinnett County, Georgia.

7. At all relevant times Mr. Martincek was and is a "consumer" within the meaning of 15 U.S.C. § 1692a(3) FDCPA.

8. Dcfendant Lloyd & McDaniel, PLC is a foreign professional limited liability corporation organized under Kentucky law, regularly engaged in debt collection within Georgia. Its principal place of business is in Kentucky, with an office in Marietta, Georgia. It may be served through its registered agent: Corporation Service Company, 2 Sun Court, Suite 400, Peachtree Corners, Georgia 30092.

9. Lloyd & McDaniel, PLC regularly collects or attempts to collect debts owed or due or alleged to be owed and is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6) FDCPA.

10. Defendant Bank of America, N.A. is a foreign profit corporation organized under the laws of the state of Delaware and is registered with the Georgia Secretary of State. Bank of America, N.A. principal place of business is in Charlotte, North Carolina. It has bank branches located throughout Georgia with corporate presence in Atlanta, Georgia. Bank of America, N.A. may be served upon its registered agent in the state of Georgia at CT Corporation System, 289 S. Culver Street, Lawrenceville, Georgia 30046.

FACTUAL ALLEGATIONS

11. At all relevant times, Defendant Lloyd & McDaniel, PLC was engaged in the business of collecting debts on behalf of Defendant Bank of America, N.A. in connection with the Plaintiff's alleged debt.

12. On or about July 22, 2024, Defendant Lloyd & McDaniel, PLC filed a collection complaint against Plaintiff in Magistrate Court of Gwinnett County, Georgia, alleging Plaintiff owed a debt arising from a credit account which was owned and administered by the Defendant Bank of America, N.A.

13. On January 9, 2025 a trial was held in Magistrate Court of Gwinnett County, Georgia between the Plaintiff and Defendant Bank of America, N.A. Defendant Lloyd & McDaniel, PLC was the law firm representing Defendant Bank of America, N.A. in this trial.

14. In connection with this trial Defendant Lloyd & McDaniel, PLC submitted a false and misleading affidavit (Exhibit A).

15. The affidavit is a form affidavit that was prepared by Defendant Bank of America, N.A. that follows procedures that the Defendant Bank of America, N.A. utilizes to create affidavits using an automated process in conjunction with its collection attorneys.

16. The affidavit prepared by Defendant Bank of America, N.A is a form affidavit which is commonly referred to as being "robo-signed" because the process of creating the affidavit involves inputting Defendant's data that was submitted by the collection attorneys into a computer program which then generates a boilerplate affidavit. This affidavit is then printed and signed by persons who purport to have personal knowledge of the facts contained in the affidavit when in fact they do not have such personal knowledge. The affidavit is then sent to another person who may or not be in the same room of the affiant to be notarized. The affidavit is then attested to by using false, illegible and/or legally insufficient signatures. The persons signing these affidavits may sign up to between 200 and 300 affidavits per day.

17. Defendant Bank of America, N.A., through its policies and procedures, has created a mass production process for affidavits that lack proper verification and oversight. Debt collectors' use of these robo-signed affidavits have been repeatedly found to constitute unfair and deceptive practices under the FDCPA.

18. Defendant Lloyd & McDaniel, PLC introduced hearsay testimony by claiming to have sworn testimony from Ms. Moorer specifically stating when the disputed account was opened, the manner in which the Plaintiff submitted the statements to the Defendant, and that the Defendant retained the statements for a period of time without protest or objection. No such sworn statement by Ms. Moorer containing these specific facts was presented at the trial. The unauthenticated, unsworn testimony misled the court about the debt's existence.

19. The Defendants maintain an intertwined business relationship. Defendant Bank of America, N.A. regularly utilizes Defendant Lloyd & McDaniel, PLC for debt collection activities, including pursuing a litigation strategy that requires both Defendants to work closely together in a "hand-in-glove" relationship to create evidence for use in debt collection proceedings. As part of this strategy, both Defendants collaborate in an automated process to generate false affidavits. The actions of both Defendants were intentional, and each knowingly participated in submitting a false and misleading affidavit.

20. Defendant Bank of America N.A. ratified the misconduct performed by Defendant Lloyd & McDaniel, PLC by willfully supplying the false and misleading affidavit to Defendant Lloyd & McDaniel, PLC.

21. The affidavit purportedly is signed by Aleecia Moorer, who claimed to be personally acquainted - have personal knowledge - with the facts of the Plaintiff's alleged debt.

22. The affiant lacked personal knowledge of the matters attested to in the affidavit in regard to the Plaintiff's alleged debt.

23. Ms. Moorer as "Custodian of Records" for Defendant Bank of America, N.A. is not genuinely familiar with the manner in which the Defendant Bank of America, N.A. records are created and maintained.

24. Additionally the affidavit was legally insufficient because it failed to comply with O.C.G.A. § 45-17-8.1 (a). The notary failed to properly attest the affidavit by complying with signing her name exactly as indicated on the notary's commission. The signature is illegible and does not match the name as indicated on the notary's commission. This improper attestation invalidates the affidavit as competent evidence under the business records exception to hearsay, O.C.G.A. § 24-8-803(6).

25. Defendant Lloyd & McDaniel, PLC submitted this affidavit with the intent of obtaining a judgment against Plaintiff, knowing the affidavit's representations were patently false and misleading.

26. Defendant Lloyd & McDaniel, PLC use of this false and misleading affidavit constitutes a deceptive means to collect a debt, in violation of 15 U.S.C. § 1692e(10).

27. The misrepresentations were material. In particular the misrepresentation that the affiant allegedly was personally acquainted with the facts of the Plaintiff's account effectively served to validate the debt to the court and Plaintiff. In addition further validation was given by the affiant allegedly claiming that she was well acquainted with how Defendant Bank of America, N.A. records are created and maintained.

28. The contents of the affidavit and the hearsay testimony acted as a message to the court and debtor that the debt is valid, that there is a total amount due, and that it is delinquent. Therefore the misrepresentations are material in that they unduly influenced the court's decision on the matter.

29. Plaintiff suffered harm as a result of Defendant's actions including the entry of an adverse judgment based on false evidence (Exhibit B).

CAUSE OF ACTION

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692e(10)

CLAIMS AGAINST Lloyd & McDaniel, PLC

30. Plaintiff incorporates by reference all preceding paragraphs as though fully stated herein.

31. Plaintiff brings this cause of action against Defendant Lloyd & McDaniel, PLC for violation of the Fair Debt Collection Practices Act, specifically 15 U.S.C. § 1692e(10), which prohibits the use of *any* false, deceptive, or misleading representation or means *in connection with* the collection of any debt.

32. The FDCPA is a remedial statute designed to protect consumers from abusive and misleading collection practices. The FDCPA applies an objective standard — that is, whether the least sophisticated consumer would be deceived by the debt collector's conduct. The standard considers the debtor to be uninformed, naive, or trusting.

33. If a debt collector:

a. Is engaged in the collection of a consumer debt;
b. Made a false or misleading representation;
c. The false representation was made in connection with the collection of a debt; and
d. The representation was material;

Then the debt collector has violated § 1692e(10).

34. Defendant Lloyd & McDaniel, PLC is a "debt collector" as defined by 15 U.S.C. § 1692a(6), in that it regularly collects or attempts to collect debts owed or due to another. See *Heintz v. Jenkins*, 514 U.S. 291 (1995) (holding that attorneys who regularly engage in consumer debt collection litigation are debt collectors under the FDCPA).

35. On January 9, 2025 in Magistrate Court of Gwinnett County, Georgia Defendant Lloyd & McDaniel, PLC submitted an affidavit that misrepresented the facts to support the lawsuit against Plaintiff. The affidavit was executed by Aleecia Moorer, who falsely claimed to have personal knowledge (personally acquainted) with the facts in regards to the Plaintiff's alleged debt. However, the affiant lacks actual personal knowledge of the account, and as "Custodian of Records" she is not familiar with the manner in which the Defendant Bank of America, N.A. records are created and maintained.

36. Also during the trial the Defendant Lloyd & McDaniel, PLC introduced hearsay testimony by claiming to have sworn testimony from Ms. Moorer specifically stating when the disputed account was opened, the manner in which the Plaintiff submitted the statements to the Defendant, and that the Defendant retained the statements for a period of time without protest or objection. No such sworn statement by the Custodian of Records containing these specific facts was presented at the trial. Ms. Moorer was not present at the trial, and was not subject to cross-examination concerning her sworn testimony.

37. Introducing unauthenticated, unsworn testimony misleads the court about the debt's existence and violates the FDCPA § 1692e by misleading the court about the debt's validity.

38. The affidavit was created through automated means and contained materially false statements that were not subject to verification or oversight. Defendant Lloyd & McDaniel, PLC because of its business relationship with the Defendant Bank of America N.A. knew or should have known the statements were false. Courts have held that such affidavits are deceptive under the FDCPA. See *Sykes v. Mel S. Harris & Associates, LLC*, 780 F.3d 70, 83–84 (2d Cir. 2015) (holding that the use of false affidavits in debt collection lawsuits constitutes a deceptive means under § 1692e(10)).

39. The term communication is defined by 15 U.S.C. § 1692a(2) as "the conveying of information regarding a debt directly or indirectly to any person through *any medium."*

40. By submitting the affidavit Defendant Lloyd & McDaniel, PLC communicated information in connection with a debt. The affidavit was used as part of a lawsuit to collect on an alleged consumer debt. This constitutes an act made "in connection with the collection of any debt" under the FDCPA. See *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226, 231 (4th Cir. 2007) (communications made in the course of litigation may constitute debt collection activity under the FDCPA).

41. The Defendant Lloyd & McDaniel, PLC engaged in deceptive conduct that materially influenced the outcome of the court case. They communicated materially false and misleading statements through the affidavit and unsworn hearsay testimony. The false and misleading representations contained in the affidavit and by the hearsay testimony is material because the fact that the affiant allegedly had personal knowledge that the debt was valid, effectively validated the debt to the Magistrate court and the Plaintiff. It was relied upon by the Magistrate Court in entering a judgment against Plaintiff, and was intended to compel Plaintiff to pay or settle an unverified debt.

42. As a result of Defendant Lloyd & McDaniel, PLC violations of § 1692e(10) Plaintiff suffered actual damages, including the adverse court judgment, and is entitled to actual and statutory damages under 15 U.S.C. § 1692k(a)(1) and (2)(A).

COUNT II

WILLFUL MISREPRESENTATIONS OF A MATERIAL FACT
Georgia Statute OCGA § 51-6-2

CLAIMS AGAINST Lloyd & McDaniel, PLC and Bank of America, N.A.

43. Plaintiff incorporates by reference all preceding paragraphs as though fully stated herein.

44. Plaintiff's cause of action for Willful Misrepresentation of a Material Fact against Lloyd & McDaniel, PLC and Bank of America, N.A. include but are not limited to the following:

45. The elements of Willful Misrepresentation of a Material Fact under Georgia law are:

1. Defendants' made a false representation,
2. with knowledge or belief that the representation was false,
3. the Defendants' intended to induce the Plaintiff to act on the representation,
4. the Plaintiff justifiably relied on the representation, and
5. the Plaintiff was damaged as a result of his reliance.

46. Defendant Bank of America N.A. created a business records affidavit that made false, deceptive, and misleading representations in respect to a debt that Defendant Bank of America, N.A. alleges that Plaintiff owes to the Defendant Bank of America N.A.

47. Both Defendants acted with intent and with actual knowledge of the falsity of the affidavit. They both had knowledge that the representations contained in the affidavit were false and misleading because they both knew that the form affidavit generated by the automated computer system lacked verification and oversight to the facts contained in the affidavit, and they both knew the affiant did not have personal knowledge in regard to the facts contained in the affidavit.

48. The Defendants intended to compel the Plaintiff to pay or settle a debt and/or obtain an adverse judgment by the Magistrate Court through the use of a false and misleading business records affidavit.

49. The Magistrate Court and the Plaintiff justifiably relied on the affidavit because the misrepresentation contained in the affidavit is based on the fact that the affiant allegedly had personal knowledge that the debt was valid, and the affiant claims as "Custodian of Records" for Defendant Bank of America, N.A. that she is familiar with the manner in which the Defendant Bank of America, N.A. records are created and maintained. These false and misleading representations contained in the affidavit effectively validated the debt.

50. The Magistrate Court's entry of judgment against the Plaintiff, along with the Defendant's offer to compel the Plaintiff to settle the alleged account in full before trial, demonstrates the Plaintiff's justifiable reliance and the resulting damages.

51. As a result of Defendant's Lloyd & McDaniel, PLC and Bank of America, N.A. actions Plaintiff has suffered damages including the adverse judgment by the Magistrate Court. Under Georgia Statute OCGA § 51-12-1 *et seq.* Plaintiff is entitled to recover actual damages, punitive damages, and other damages that the Court may award from both Defendants Lloyd & McDaniel, PLC and Bank of America, N.A.

TRIAL BY JURY

Plaintiff is entitled to and hereby requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendants, and grant the following relief:

1. Award Plaintiff actual damages pursuant to 15 U.S.C. § 1692k(a)(1) and O.C.G.A. § 51-12-1 *et seq*.;
2. Award Plaintiff statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A);
3. Award Plaintiff punitive damages as authorized by Georgia law, O.C.G.A. § 51-12-5.1;
4. Award Plaintiff reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1692k(a)(3);
5. Award any additional relief the Court deems just and proper, including equitable or injunctive relief as appropriate.

DATED this 20th day of May, 2025

Respectfully submitted,

By: [signature]

Eric Martincek, *pro se*
3255 Lawrenceville Suwanee Road
P#142
Suwanee, GA 30024
678-341-0713
laxatl@protonmail.com

Bank of America, N.A.,
Plaintiff

v.

ERIC MARTINCEK,
Defendant(s)

GWINNETT MAGISTRATE COURT

LAWRENCEVILLE, GA

24-M-30923

BUSINESS RECORDS AFFIDAVIT

Before me, the undersigned notary, personally appeared Aleecia Moorer, who being by me duly sworn, deposed as follows:

My name is Aleecia Moorer, and I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated.

Bank of America, N.A. ("BANA") is a wholly-owned subsidiary of Bank of America Corporation and the successor-in-interest to FIA Card Services, N.A., formerly known as MBNA America Bank, N.A. ("FIA"). FIA was merged into and under the charter and title of BANA effective October 1, 2014.

I am a custodian of records of BANA and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.

Attached are **60** pages of records. These are the original records or exact duplicates of the original records, save and except for (i) any marking clearly intended to identify the document as a copy and (ii) any redaction clearly intended to remove personal identifying information of the Defendant.

The records were made at or near the time of each act or event they purport to describe occurred.

The records were made by, or from information transmitted by, an employee or representative of BANA with knowledge of the transaction, act, event, or condition recorded, or by a computer or other similar digital means, which contemporaneously records an event as it occurs.

The records were kept in the course of regularly conducted business activity.

It is the regular practice of the business activity to make the records.

Affiant Name (Signature) Aleecia Moorer Affiant Name (Printed) Aleecia Moorer

State of: **NORTH CAROLINA**
County of: **GUILFORD**

SIGNED and sworn to (or affirmed) before me, the undersigned Notary Public in and for the jurisdiction aforesaid, by

Aleecia Moorer, on this day, NOV 04 2024

Notary Public

My Commission Expires: OCT 02 2029

KATHLENA EDWARDS
NOTARY PUBLIC
MY COMMISSION EXPIRES OCTOBER 02, 2029
GUILFORD COUNTY, NC

ID: 406933041900

Exhibit A

BANK of AMERICA, N.A.,

Plaintiff(s)

vs.

ERIC MARTINCEK,

Defendant(s)

GWINNETT MAGISTRATE COURT
STATE OF GEORGIA

Civil Action No. 24-M-30923

30923
30923

[✓] JUDGMENT [ ] CONSENT JUDGMENT [ ] DEFAULT JUDGMENT [ ] DISMISSAL

The above case having come on regularly to be heard, the Court makes the following findings: (check only if applicable)

[✓] Defensive pleadings filed by Defendant(s)
[ ] Counterclaim filed by Defendant(s)
[✓] Plaintiff(s) appeared [ ] Plaintiff(s) failed to appear
[✓] Defendant(s) appeared [ ] Defendant(s) failed to appear
[ ] Voluntary dismissal without prejudice - Statement of Claim *(can be re-filed)*
[ ] Voluntary dismissal - Counterclaim
[ ] Stipulated settlement and dismissal
[✓] Contested hearing held

IT IS ORDERED AND ADJUDGED that:

[ ] Plaintiff(s)' statement of claim
[ ] Dismissed for want of prosecution, without prejudice *(can be refilled)*
[✓] Judgment is entered in favor of [✓] Plaintiff(s) [ ] Defendant(s)

[ ] Defendant(s)' counterclaim
[ ] Dismissed for want of prosecution, without prejudice *(can be refilled)*
[ ] Judgment is entered in favor of [ ] Plaintiff(s) [ ] Defendant(s)

[✓] **Judgment** (*net judgment when a claim and counterclaim have been considered*) is entered in favor of [✓] Plaintiff(s) [ ] Defendant(s)

against [ ] Plaintiff(s) [✓] Defendant(s), ______

$ 6,541.65 principal $ ø attorney's fees future interest at 10.5 % yr.

$ ø interest $ 110.00 court costs

[ ] **Other** ______

[ ] Said judgment shall, by [ ] the consent of both parties, [ ] order of the Court, be paid to [ ] Plaintiff [ ] Defendant, as follows:

[ ] periodic payments in the sum of $______, commencing ______,

payable monthly, on the ______ of each month.

[ ] in full on or before ______.

[ ] as attached/ follows: ______

at the following address: ______

No Fi.Fa. shall issue and no garnishment or other action may be taken on this judgment so long as payments are timely paid. Should the judgment debtor(s) fail to make a payment or should payment be made more than 5 days beyond the due date, the Clerk of Magistrate Court is authorized to issue a Writ of Fi.Fa. in the amount then outstanding upon written affidavit/notice from the judgment creditor that payments have not been made as agreed and upon payment of the applicable Fi.Fa. fee by the judgment creditor.

Duties of judgment creditor: Upon payment of the entire debt upon which a judgment or FiFa has been issued, the judgment creditor shall timely (within 60 days) direct the clerk(s) of the appropriate court(s) in writing to: (1) cancel the writ of FiFa, if a writ was issued; (2) mark the judgment satisfied. Failure to timely comply may subject the judgment creditor to monetary damages, O.C.G.A. § 9-13-80.

SO ORDERED, this 9 day of Jan., 20 25.

[signature]
Magistrate

Consented to by:

______

______

______

Exhibit B