**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA OCALA DIVISION**

RAPHAEL HERINGER, CASE NO.:

Plaintiff,

vs.

NATIONAL ENTERPRISE SYSTEMS, INC.,

Defendant.
_______________________________________/

## COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, RAPHAEL HERINGER [hereinafter "Plaintiff"], alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. [hereinafter "FDCPA"], and of the Florida Consumer Collection Practices Act § 559.55 et seq. [hereinafter "FCCPA"] as more fully set forth below.

## PARTIES

1. Plaintiff is a natural person who currently resides in Citrus County, Florida.

2. Defendant is a nationwide debt collection agency that operates from a principal address of 29125 Solon Road, Solon, OH 44139. Defendant collects debts throughout the United States of America, including Citrus County, Florida.

## JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this action arises out of 15 U.S.C. 1692, a federal statute.

4. The Court has supplemental jurisdiction over the FCCPA claims under 28 U.S.C. § 1367 because the basis of the FCCPA and FDCPA federal claims are inexorably intertwined.

5. The Court has personal jurisdiction because Defendant conducts business throughout the United States, including Citrus County, Florida. Further, their voluntary contact with Plaintiff to charge and collect debts in Florida made it foreseeable that Defendants would be haled into a Florida court. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

6. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) because Defendant is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced and because their contacts with this District are sufficient to subject them to personal jurisdiction.

## LEGAL STANDARD
## FDCPA

7. The purpose of the FDCPA is "to eliminate abusive debt collection practices . . . and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692.

8. The FDCPA prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," which includes the false representation of "the character, amount, or legal status of any debt." *Id.* § 1692e.

9. The FDCPA also prohibits debt collectors from "unfair or unconscionable means to collect or attempt to collect any debt," including "the collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law." *Id.* § 1692f.

10. The FDCPA creates a private right of action under 15 U.S.C. § 1692k.

11. The FDCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." *Id.* § 1692a(3).

12. The FDCPA defines "debt collector" as "any person who uses . . . any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect . . . debt owed . . . or asserted to be owed or due another." *Id.* § 1692a(6).

13. The FDCPA defines communication as "conveying of information regarding a debt directly or indirectly to any person through any medium." *Id.* § 1692a(2).

14. The FDCPA defines "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction . . . [that] are primarily for personal, family, or household purposes." *Id.* § 1692a(5).

**FCCPA**

15. The FCCPA prohibits debt collectors from engaging in certain abusive practices in the collection of consumer debts. *See* generally Fla. Stat. § 559.72.

16. The FCCPA's goal is to "provide the consumer with the most protection possible." *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1192 (11th Cir. 2010) (citing Fla. Stat. § 559.552).

17. Specifically, the FCCPA states that no person shall "claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate or assert the existence of some other legal right when such person knows that the right does not exist." Fla. Stat. § 559.72(9).

18. The FCCPA creates a private right of action under Fla. Stat. § 559.77.

19. The FCCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." *Id*. § 559.55(8).

20. Unlike the F.D.C.P.A., the Florida Consumer Collection Practices Act is not restricted solely to third party debt collectors. While the Act does not define the term "person," it mandates that "no person" shall engage in certain practices in collecting consumer

claims whether licensed by the division or not. This court has held that this language includes allegedly unlawful attempts at collecting consumer claims. Williams v. Streeps Music Co., 333 So. 2d 65, 67 (Fla. 4th DCA 1976).

21. The FCCPA defines "debt" as "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." *Id*. § 559.55(6).

**THE UNDERLYING DISPUTE**

22. On or about September 20, 2023, Plaintiff entered into a contract for a home improvement project with Web Bank. (A true and correct copy of the contract will be filed with Court once discovery has been exchanged)

23. The contract contemplated that WebBank would advance certain monies to Hopps Construction, the contractor who was approved by WebBank to perform the renovations at Plaintiff's residence.

24. The contract further contemplated that Hopps Construction would complete certain construction milestones for each disbursement made to it by WebBank.

25. WebBank disbursed $22,500.00 to Hopps Construction, Inc. to begin the home improvements at Plaintiff's residence.

26. However, for unknown reasons, Hopps Construction performed absolutely no home improvements at Plaintiff's residence.

27. Plaintiff communicated repeatedly with Hopps Construction, who for unknown reasons, refused to perform any of the home renovations at issue.

28. Frustrated, Plaintiff spoke with WebBank.

29. Plaintiff advised WebBank in no uncertain terms that Hopps Construction had performed absolutely no work, yet they were in possession of a $22,500.00 advance from WebBank in order to perform the same.

30. WebBank advised Plaintiff to obtain a communication from Hopps Construction which confirmed that none of the home renovation work had been performed, and that upon receipt of the same, WebBank would zero out the balance allegedly owed from Plaintiff.

31. Plaintiff obtained a letter from Hopps Construction which indicated that they had performed none of the home renovation work and also confirming that Hopps Construction requested a cancellation of the loan.

32. Plaintiff then forward the letter to WebBank, who confirmed that Plaintiff owed no money to WebBank, and that they would instead pursue the $22,500.00 from Hopps Construction. (A true and correct copy of the letter is attached hereto as Exhibit A)

33. However, WebBank broke its promise to Plaintiff.

34. Instead of zeroing out Plaintiff's balance to WebBank, they instead forwarded Plaintiff's file to Defendant National Enterprise Systems for collections.

35. WebBank has an obligation to forward all material terms as to Plaintiff's account to National Enterprise Systems. Upon information and belief, and therefore alleged, WebBank complied with its obligation.

36. More specifically, as mandated by the FDCPA, WebBank was required to send National Enterprise Systems information sufficient to enable them to send a compliant Debt Validation Notice. This information includes but is not limited to the total amount that is allegedly due from Plaintiff, and a complete itemization of the debt, including the amount of interest, fees, payments, and credits applied from the inception of the loan. (See 12 CFR § 1006.34)

37. Therefore, National had actual knowledge that WebBank only disbursed $22,500.00 out of the total loan proceeds, and that there was no such thing as a "miscellaneous charge" in the amount of $24,151.47 that was due from Plaintiff as referenced in Paragraph 50, infra.

38. Plaintiff called National to discuss his account. Plaintiff was advised by National that they were a debt collector and were attempting to collect a debt, and that any information that they gathered would be used for that purpose.

39. National falsely and illegally advised Plaintiff that he was indebted in the amount of $47,479.69.

40. Plaintiff was further advised by National that a U.C.C. lien had been placed on the property at issue, and that the same would not be released until Plaintiff paid the sum of $47.479.69.

41. The statements that a UCC lien had been placed on the property at issue and that Plaintiff owed $47,479.69 were false statements that were made by National in an attempt to extract money from Plaintiff that he simply did not owe. These statements were made with actual knowledge that they were false.

42. Plaintiff advised National that WebBank had only advanced the contractor $22,500.00, so it was impossible that they were seeking any amount exceeding that sum.

43. Further, Plaintiff advised National that absolutely none of the work had actually been performed, and that WebBank had agreed to seek any sum alleged to be due from Hopps Construction. After providing all this information, Plaintiff hung up. Again, this call gave National actual knowledge that their debt collection attempts were both false and illegal.

44. The following week, Plaintiff called National again and was connected with Ms. Aisha Copeland.

45. Ms. Copeland again falsely told Plaintiff that he was indebted in the amount of $47,479.69. That statement was false and was an attempt to collect a debt from Plaintiff that he simply did not owe. Ms. Copeland had actual knowledge that her statement was false.

46. Ms. Copeland then transferred Plaintiff to her immediate supervisor, Mr. Russell Rizzo.

47. Mr. Copeland repeated the false assertion that Plaintiff was indebted in the amount of $47,479.69. This false statement was an attempt to collect a debt from Plaintiff that he simply did not owe. Mr. Copeland made this false statement with actual knowledge that it was false.

48. Mr. Copeland also provided Plaintiff with a breakdown as to how National arrived at the figure of $47,479.69.

49. Mr. Copeland advised Plaintiff that the principal loan balance was alleged to be $22,500.00, that interest charges were alleged to be $1,828.20, and incredibly, there was a "miscellaneous charge" in the amount of $24,151.47. This breakdown of the alleged debt was a false statement and was an attempt to collect a debt from Plaintiff that he simply did not owe.

50. Plaintiff is a "consumer" as defined by the FCCPA and the FDCPA. See Fla. Stat. § 559.55(2) and pursuant to 15 U.S.C. § 1692a(3).

51. These telephone calls and the correspondence that National sent to Plaintiff were "communications" as contemplated by both the FDCPA and the FCCPA. Plaintiff will supplement his Complaint with the written communications from National once discovery has been exchanged.

52. National demanded charges that were not due and owing and which were never incurred, and Defendant had actual knowledge that the charges were categorically false.

53. National is a "debt collector" as contemplated by the FCCPA and FDCPA pursuant to the language included in their correspondence to Plaintiff, pursuant to their admission in all calls with Plaintiff that they are a "debt collector," and their registration with the state of Florida as a "debt collector".

54. The underlying debt was for a home renovation and was exclusively for personal purposes.

**COUNT 1**
**VIOLATION OF THE**
**FLORIDA CONSUMER COLLECTION PRACTICES ACT 555.72(9)**

55. Defendant expressly and willfully claimed and/or threatened to enforce an alleged debt owed by Plaintiff that Defendant knew was not legitimate, had no legal right to, and was inaccurate and/or invalid. See Fla. Stat.§ 559.72(9) (2011) (stating that it is unlawful for a debt collector to "claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate or assert the existence of some other legal right when such person knows that the right does not exist").

56. As a result of the above violations of the FCCPA, Defendant is liable to the Plaintiff for actual damages and statutory damages of $1,000.00 per named Defendant found liable, together with attorney's fees and all costs of Plaintiff's representation.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against Defendant for all of the following:

a. Actual damages;

b. Statutory damages pursuant to Fla. Stat. 559.72(2);

c. Reasonable Attorneys' fees pursuant to Fla. Stat. §559.77(2);

d. Such other and further relief as the Court may deem to be just and proper.

**COUNT 2**
**VIOLATION OF THE**
**FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692 et seq.**

57. The foregoing act and omission of the Defendant constitute numerous and multiple violations of the FDCPA including, but not limited to, each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq., with respect to the Plaintiff.

58. As a result of the Defendant's violation of the FDCPA, Plaintiff is entitled to statutory damages in an amount up to $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1692k(a)(3), from the Defendant herein.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in favor of Plaintiff and against Defendants for:

a) Damages and

b) Attorneys' fees and costs.

**COUNT 3**
**VIOLATION OF THE**
**FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692e(2)**

59. Defendant falsely represented the character of the debt that was allegedly owed to Defendant.

60. Defendant attempted to collect the debt from Plaintiff that it knew was not legitimate.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in favor of Plaintiff and against Defendant for:

a) Damages and

b) Attorneys' fees and costs.

**COUNT 4**
**VIOLATION OF THE**
**FAIR DEBT COLLECTION PRACTICES 15 U.S.C. § 1692f(1)**

61. Defendant falsely represented the character of the alleged debt that was allegedly owed to Defendant.

62. The alleged debt that Defendant attempted to collect from Plaintiff was not expressly authorized by the agreement creating the alleged debt nor was it permitted by law.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in favor of Plaintiff and against Defendant for:

a) Damages and

b) Attorneys' fees and costs.

**TRIAL BY JURY**

Plaintiff is entitled to and hereby respectfully demands a trial by jury on all counts stated within and any issues so triable.

**RELIEF REQUESTED**

WHEREFORE, based on the above stated in this complaint Plaintiff has been the subject of Defendant's abusive and unfair practices in their debt collection activity was in violation of the FCCPA and the FDCPA. Plaintiff respectfully requests this Honorable Court to enter judgment in favor of the Plaintiff on all counts and requested forms of relief and against Defendant.

Dated: March 3, 2026.

Respectfully Submitted,

*s/ J. Dennis Card, Jr.*
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