

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

MARY MUSSELWHITE,)	
)	COMPLAINT
Plaintiff,)	
v.)	Case No.: 6:20-cv-00055
)	
WEBCOLLEX, LLC d/b/a CKS FINANCIAL)	JURY TRIAL DEMANDED
)	
Defendant.)	

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff Mary Musselwhite, by and through the undersigned counsel, and for her Complaint against Defendant, Webcollex, LLC d/b/a CKS Financial under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (“FDCPA”), states as follows:

JURISDICTION

1. This court has jurisdiction of the federal claim under 15 U.S.C. § 1692k(d).
2. Venue is proper because the acts and transactions occurred here, Plaintiff resides here, and Defendant transacts business here.

STANDING

3. Plaintiff has a congressionally defined right to receive all communications from a debt collector free from any misrepresentations and false threats.
4. Defendant’s collection activities violated the FDCPA.
5. Plaintiff has thus suffered an injury as a result of Defendant’s conduct, giving rise to standing before this Court. Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1544 (2016), quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 580 (1992) (Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.); Bellwood v. Dwivedi, 895 F. 2d 1521, 1526-27 (7th Cir. 1990) (“Congress can create new substantive

rights, such as a right to be free from misrepresentations, and if that right is invaded the holder of the right can sue without running afoul of Article III, even if She incurs no other injury[.]”).

6. “Without the protections of the FDCPA, Congress determined, the ‘[e]xisting laws and procedures for redressing these injuries are inadequate to protect consumers.’” Lane v. Bayview Loan Servicing, LLC, No. 15 C 10446, 2016 WL 3671467, at *3 (N.D. Ill. July 11, 2016)(quoting 15 U.S.C. § 1692(b)). Thus, a failure to honor a consumer’s right under the FDCPA constitutes an injury in fact for Article III standing. See *id.* at *3 (holding that a consumer “has alleged a sufficiently concrete injury because She alleges that [Defendant] denied him the right to information due to him under the FDCPA.”); see also Church v. Accretive Health, Inc., No. 15-15708, 2016 WL 3611543, at *3 (11th Cir. July 6, 2016) (holding that consumer’s § 1692g claim was sufficiently concrete to satisfy injury-in-fact requirement).

7. “[E]ven though actual monetary harm is a sufficient condition to show concrete harm, it is not a necessary condition.” Lane, 2016 WL 3671467 at *4.

PARTIES

8. Plaintiff Mary Musselwhite (hereafter “Plaintiff”), is a natural person currently residing in Texas.

9. Plaintiff is a “consumer” within the meaning of the Fair Debt Collection Practices Act.

10. Defendant, Webcollex, LLC, d/b/a CKS Financials (hereafter “Defendant”) is a Virginia limited liability company located at 505 Independence Parkway, Suite 300, Chesapeake, VA, 23320.

11. Defendant is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts originally owed to others.

12. Defendant regularly collects or attempts to collect defaulted consumer debts due or asserted to be due another, and is a “debt collector” as defined in 15 U.S.C. § 1692a(6) of the FDCPA.

FACTUAL ALLEGATIONS

13. Plaintiff is a natural person allegedly obligated to pay a debt asserted to be owed to a creditor other than Defendant.

14. On or about February 13, 2019, Plaintiff had a telephone conversation with Defendant regarding an alleged debt allegedly owed by Plaintiff.

15. The alleged debt was said to be originally owed to “LendingClub” and would have been incurred only for personal, family, or household purposes.

16. The alleged debt was primarily for personal, family or household purposes and is therefore a “debt” as defined by 15 U.S.C. § 1692a(5).

17. The telephone call is a “communication” as defined by 15 U.S.C. § 1692a(2).

18. During the telephone call, Plaintiff stated that she wanted to dispute the debt.

19. Defendant’s representative immediately began to overshadow Plaintiff’s rights to dispute the alleged debt.

20. Defendant told Plaintiff that she needed a reason to dispute.

21. Defendant’s statements were false and misleading in nature.

22. Plaintiff does not need a reason to dispute a debt, nor does she need to give a reason to Defendant. Mendez v. M.R.S. Assoc., 2004 WL 1745779 *2 (N.D. Ill. Aug. 3, 2004). (A consumer is entitled to dispute the validity of a debt for a good reason, a bad reason, or no reason at all), Whitten v. ARS National Servs. Inc., 2002 WL 1050320 *4 (N.D. 111 May 23, 2002). (Imposing a requirement that a consumer have a ‘valid’ reason to dispute the debt is inconsistent with FDCPA), Castro v. ARS National Servs., Inc., 2000 WL 264310 (S.D.N.Y. Mar. 8, 2000), Frey v. Satter, Beyer & Spires., 1999 WL 301650 (N.D. Ill. May 3, 1999).

23. In addition, Plaintiff told Defendant that she was disputing the balance of the debt.

24. Defendant would not let Plaintiff dispute and continued to state that Plaintiff needed a reason, as if Plaintiff's reason was not good enough.

25. Defendant tried to circumvent Plaintiff from disputing the debt, therefore, restricting Plaintiff's rights.

26. Defendant then went on to offer Plaintiff a settlement on her account, even after Plaintiff had stated that she wanted to dispute the alleged debt several times.

27. After Plaintiff disputed the alleged debt, Defendant should have accepted the dispute and ceased collection activities. Defendant, though, chose to attempt to coerce Plaintiff into making a payment on a debt she clearly felt she did not owe.

28. Yet again, Plaintiff told Defendant she wanted to dispute the debt and Defendant again demanded a reason for said dispute.

29. Again, Defendant's statements were false and misleading in nature.

30. All of Defendant's actions complained of herein occurred within one year of the date of this Complaint.

31. Defendant's conduct has caused Plaintiff to suffer damages including but not limited to the loss of time incurred by Plaintiff as well as attorneys' fees paid for advice regarding her situation.

32. Congress has found that "[a]busive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692(a).

33. Here, Plaintiff has suffered an injury-in-fact in at least one of the manners contemplated by Congress when it passed the FDCPA because of Defendant's conduct.

34. Plaintiff's injury-in-fact is fairly traceable to the challenged representations of Defendant.

35. Plaintiff's injury-in-fact is likely to be redressed by a favorable decision in this Court.

36. Defendant's collection communications are to be interpreted under the "least sophisticated consumer" standard. See, Goswami v. Am. Collections Enter., Inc., 377 F.3d 488, 495 (5th Cir. 2004); Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232, 1236 (5th Cir.1997) (When deciding whether a debt collection letter violates the FDCPA, this court "must evaluate any potential deception in the letter under an unsophisticated or least sophisticated consumer standard.) See Also, Goswami, 377 F.3d at 495. (We must "assume that the plaintiff-debtor is neither shrewd nor experienced in dealing with creditors.")

COUNT I: Violations Of § 1692e Of The FDCPA – False Representation Of The Character, Amount, or Legal Status Of The Alleged Debt

37. Plaintiff incorporates by reference all other paragraphs of this Petition as if fully stated herein.

38. Section 1692e of the FDCPA prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt, including, but not limited to, the false representation of the character, amount, or legal status of any debt. See, 15 U.S.C. § 1692e(2).

39. Defendant's collection activities violate 15 U.S.C. § 1692e(5), which prohibits the threat to take any action that cannot legally be taken or that is not intended to be taken.

40. Defendant used false representations or deceptive means to collect or attempt to collect a debt or obtain information concerning the Plaintiff, in violation of 15 U.S.C. § 1692e(10).

41. Defendant's collection efforts only serve to confuse and mislead the consumer.

42. Defendant's collection efforts were materially false, misleading, and deceptive.

43. Defendant's violation of § 1692e of the FDCPA renders it liable for actual and statutory damages, costs, and reasonable attorneys' fees. See, 15 U.S.C. § 1692k.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Mary Musselwhite prays that this Court:

- A. Declare that Defendant's debt collection actions violate the FDCPA;
- B. Enter judgment in favor of Plaintiff Mary Musselwhite, and against Defendant, for actual and statutory damages, costs, and reasonable attorneys' fees as provided by § 1692k(a) of the FDCPA; and
- C. Grant other such further relief as deemed just and proper.

COUNT II: Violations Of § 1692d & 1692f Of The FDCPA – Harassment or Abuse, False or Misleading Representation, & Unfair Practices

44. Plaintiff incorporates by reference all other paragraphs of this Petition as if fully stated herein.

45. Section 1692d prohibits any debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

46. Defendant's communications with Plaintiff were meant to shame, embarrass, and harass Plaintiff by misrepresenting the alleged debts status.

47. Section 1692f prohibits the use of unfair and unconscionable means to collect a debt.

48. Defendant's communications with Plaintiff were deceptive and misleading.

49. Defendant used unfair and unconscionable means to attempt to collect the alleged debt.

50. Defendant's violation of § 1692d and § 1692f of the FDCPA renders it liable for actual and statutory damages, costs, and reasonable attorneys' fees. See, 15 U.S.C. § 1692k.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Mary Musselwhite prays that this Court:

- A. Declare that Defendant's debt collection actions violate the FDCPA;

B. Enter judgment in favor of Plaintiff Mary Musselwhite, and against Defendant, for actual and statutory damages, costs, and reasonable attorneys' fees as provided by § 1692k(a) of the FDCPA; and

C. Grant other such further relief as deemed just and proper.

JURY DEMAND

51. Plaintiff demands a trial by jury on all Counts so triable.

Dated: February 6, 2020.

Respectfully Submitted,

HALVORSEN KLOTE

By: /s/ Samantha J. Orłowski

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