

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

MISTY L. DELANEY,

Plaintiff,

v.

VALENTINE & KEBARTAS, LLC,

Defendant.

CIVIL ACTION

COMPLAINT 9:19-cv-00197

JURY TRIAL DEMANDED

COMPLAINT

NOW COMES Misty L. Delaney (“Plaintiff”), by and through her attorneys, Sulaiman Law Group, Ltd., complaining of the Defendant, Valentine & Kebartas, LLC (“Defendant”) as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action seeking redress for violations of the Fair Debt Collection Practices Act (“FDCPA”) pursuant to 15 U.S.C. §1692, violations of the Telephone Consumer Protection Act (“TCPA”) pursuant to 47 U.S.C. §227, and violations of the Texas Debt Collection Act (“TDCA”) pursuant to Tex. Fin. Code Ann. § 392.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by the FDCPA, TCPA, and 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for the state claim pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Plaintiff resides in the Eastern District of Texas, Defendant conducts business in the Eastern District of Texas, and a substantial

portion of the events or omissions giving rise to the claims occurred within the Eastern District of Texas.

PARTIES

4. Plaintiff is a consumer and natural person over 18-years-of-age who, at all times relevant, resided in the Eastern District of Texas.

5. Defendant is a third-party debt collection agency headquartered at 15 Union Street No. 6, Lawrence, Massachusetts 01840. Defendant's primary business purpose is collecting or attempting to collect, directly or indirectly, defaulted consumer debts owed or due or asserted to be owed or due to others using the mail and telephone, including consumers in the State of Texas. According to its website, Defendant is "an industry leader in the fields of account receivable and collection services."¹

FACTS SUPPORTING CAUSE OF ACTION

6. Around 2004, Plaintiff attended Northwestern University in Louisiana and obtained a student loan to help finance her education ("subject debt").

7. Subsequently, Plaintiff could not keep up with the payments on her student loan and defaulted on the subject debt.

8. Thereafter, Defendant acquired the right to collect on the subject debt while it was in default.

9. Around September 2019, Defendant began placing calls to Plaintiff's cellular phone number, (318) XXX-6374.

10. Plaintiff answered a call from Defendant to ascertain why they were contacting her. During this conversation, Defendant informed Plaintiff it was attempting to collect on the subject debt.

¹ <https://valentineandkebartas.com/vk-difference/>

Plaintiff informed Defendant that its calls were unwanted and demanded Defendant stop calling her.

11. Plaintiff's demand that Defendant's phone calls cease fell on deaf ears, and Defendant continued to bombard Plaintiff with collection calls.

12. Furthermore, Defendant contacted Plaintiff's husband on multiple occasions in an attempt to reach Plaintiff.

13. Moreover, Plaintiff was informed by her husband's ex-wife, Mary, that Defendant also called Mary, disclosed they were a debt collector attempting to collect on the subject debt, and sought the whereabouts of Plaintiff in connection with the subject debt.

14. Failing to acquiesce to Plaintiff's demand that it stop calling, Defendant continued to call Plaintiff.

15. Notwithstanding Plaintiff's request that Defendant cease placing calls to her cellular phone, Defendant placed or caused to be placed numerous phone calls to Plaintiff's cellular phone between September 2019 and the present day.

16. Moreover, in the phone calls Plaintiff answered, Plaintiff was greeted by a noticeable period of "dead air" while Defendant's telephone system attempted to connect Plaintiff to a live agent.

17. Specifically, there would be an approximate 3 second pause between the time Plaintiff said "hello," and the time that a live agent introduced them self as a representative of Defendant attempting to collect on the subject debt.

18. Likewise, Plaintiff also hears what sounds to be call center noise in the background of Defendant's collection calls.

19. Plaintiff's demands that Defendant's phone calls cease fell on deaf ears and Defendant continued its phone harassment campaign.

20. Defendant intentionally harassed and abused Plaintiff on numerous occasions by calling multiple times in one day, and on back to back days, with such frequency as can be reasonably expected to harass.

21. Upon information and belief, Defendant placed its calls to Plaintiff's cellular telephone using an automated telephone dialing system, a dialing system that is commonly used in the debt collection industry to collect defaulted debts.

22. Defendant has called Plaintiff from phone number (800) 731-7766, but upon information and belief, it has contacted Plaintiff using other phone numbers.

DAMAGES

23. Defendant's harassing and unfair collection conduct has severely disrupted Plaintiff's daily life and general well-being.

24. Plaintiff has expended time and incurred costs consulting with his attorneys as a result of Defendant's false, deceptive, harassing, and misleading collection efforts.

25. Defendant's illegal collection activities have caused Plaintiff actual harm, including but not limited to, invasion of privacy, nuisance, intrusion upon and occupation of Plaintiff's cellular telephone capacity, wasting Plaintiff's time, emotional distress, aggravation that accompanies unsolicited debt collection efforts, harassment, emotional distress, anxiety, and loss of concentration.

26. Concerned about the violations of his rights and invasion of her privacy, Plaintiff sought the assistance of counsel to permanently cease Defendant's collection efforts.

COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

27. Plaintiff restates and realleges paragraphs 1 through 26 as though fully set forth herein.

28. Plaintiff is a “consumer” as defined by FDCPA §1692a(3).

29. The subject debt is a “debt” as defined by FDCPA §1692a(5) as it arises out of a transaction due or asserted to be owed or due to another for personal, family, or household purposes.

30. Defendant is a “debt collector” as defined by §1692a(6) because it’s a business, the principal purpose of which, is the collection of debts and uses the mail and/or the telephones to collect delinquent accounts allegedly owed to a third party.

31. Moreover, Defendant is a “debt collector” because it acquired rights to the subject debt after it was in default. 15 U.S.C. §1692a(6).

32. Defendant used the phone to attempt to collect the subject debt and, as such, engaged in “communications” as defined in FDCPA §1692a(2).

33. Defendant’s communications to Plaintiff were made in connection with the collection of the subject debt.

34. Defendant violated 15 U.S.C. §§1692b(2), c(a)(1), c(b), d, d(5), and f through its unlawful debt collection practices.

a. Violations of FDCPA § 1692b(2)

35. Defendant violated §1692b(2) when Defendant contacted third parties stating that Plaintiff owed the subject debt. Defendant contacted Plaintiff’s husband on numerous occasions. Additionally, Defendant contacted Mary Ward, Plaintiff’s husband’s ex-wife, and stated they were a bill collector looking for Plaintiff in connection with the subject debt.

b. Violations of FDCPA § 1692c

36. Defendant violated §1692c(a)(1) when it continuously called Plaintiff after being notified to stop. This repeated behavior of continuously and systematically calling Plaintiff's cellular phone over and over after she demanded that it cease contacting her was harassing and abusive. Even after being told to stop calling her, Defendant continued its onslaught of phone calls with the specific goal of abusing Plaintiff into making a payment on the subject debt.

37. Furthermore, Defendant violated §1692c(b) when Defendant communicated with Plaintiff's husband and Mary Ward in relation to the collection of the subject debt.

c. Violations of FDCPA § 1692d

38. Defendant violated §1692d by engaging in abusive, harassing, and oppressive conduct by relentlessly calling Plaintiff's cellular phone seeking payment on the subject debt. Moreover, Defendant continued its harassment campaign even after Plaintiff demanded that the calls cease.

39. Defendant violated §1692d(5) by causing Plaintiff's cellular phone to ring repeatedly and continuously in an attempt to engage Plaintiff in conversations regarding the collection of the subject debt with the intent to annoy, abuse, or harass Plaintiff. Defendant placed or caused to be placed numerous harassing phone calls to Plaintiff's cellular phone from September 2019 through the present day.

d. Violations of FDCPA § 1692f

40. Defendant violated §1692f by engaging in unfair means in an attempt to collect on the subject debt. Defendant's repeated communications to Plaintiff after Plaintiff asked that it stop were nothing more than an attempt to intimidate Plaintiff into making a payment on the subject debt. Additionally, it was unconscionable for Defendant to disclose that Plaintiff owed a debt to

Plaintiff's husband's ex-wife. Defendant only engaged in this unconscionable behavior in an attempt to dragoon Plaintiff into making a payment on the subject debt.

41. Upon information and belief, Defendant systematically places unsolicited and harassing debt collection calls to consumers in Texas in order to aggressively collect debts in default to increase its profitability at the consumers' expense.

42. Upon information and belief, Defendant has no system in place to document, archive, and cease collection of debts not owed.

WHEREFORE, Plaintiff MISTY L. DELANEY respectfully requests that this Honorable Court:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned bodies of law;
- b. Awarding Plaintiff statutory damages of \$1,000.00 as provided under 15 U.S.C. §1692k(a)(2)(A);
- c. Awarding Plaintiff actual damages, in an amount to be determined at trial, as provided under 15 U.S.C. §1692k(a)(1);
- d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C. §1692k(a)(3); and
- e. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – DEFENDANT’S VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

43. Plaintiff restates and realleges paragraphs 1 through 42 as though fully set forth herein.

44. Defendant repeatedly placed or caused to be placed frequent non-emergency calls, including, but not limited to the calls referenced above, to Plaintiff's cellular telephone number using an automatic telephone dialing system ("ATDS") without Plaintiff's consent in violation of 47 U.S.C. §227 (b)(1)(A)(iii).

45. The TCPA defines ATDS as “equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.” 47 U.S.C. §227(a)(1).

46. Upon information and belief, based on Defendant’s lack of prompt human response during the phone calls in which Plaintiff answered, Defendant used an ATDS to place calls to Plaintiff’s cellular telephone.

47. Upon information and belief, the ATDS employed by Defendant transfers the call to a live agent once a human voice is detected, thus resulting in a pause after the called party speaks into the phone.

48. Upon information and belief, Defendant’s phone system stores telephone numbers to be called, using a random or sequential number generator, which it used to call Plaintiff on her cellular phone.

49. Defendant violated the TCPA by placing numerous phone calls to Plaintiff’s cellular telephone between September 2019 and the present, using an ATDS without her consent.

50. Any prior consent, if any, was revoked by Plaintiff’s verbal revocation.

51. As pled above, Plaintiff was severely harmed by Defendant’s collection calls to her cellular phone.

52. Upon information and belief, Defendant has no system in place to document and archive whether it has consent to continue to contact consumers on their cellular phones.

53. Upon information and belief, Defendant knew its collection practices were in violation of the TCPA, yet continued to employ them to increase profits at Plaintiff’s expense.

54. Defendant, through its agents, representatives, vendors, subsidiaries, third party contractors and/or employees acting within the scope of their authority acted intentionally in violation of 47 U.S.C. §227(b)(1)(A)(iii).

55. Pursuant to 47 U.S.C. §227(b)(3)(B), Defendant is liable to Plaintiff for a minimum of \$500 per phone call. Moreover, pursuant to 47 U.S.C. §227(b)(3)(C), Defendant's willful and knowing violations of the TCPA triggers this Honorable Court's discretion to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. §227(b)(3)(C).

WHEREFORE, Plaintiff MISTY L. DELANEY respectfully prays this Honorable Court for the following relief:

- a. Declare Defendant's phone calls to Plaintiff to be in violation of the TCPA;
- b. Award Plaintiff damages of at least \$500 per phone call and treble damages pursuant to 47 U.S.C. § 227(b)(3)(B)&(C); and
- c. Awarding Plaintiff costs and reasonable attorney fees;
- d. Enjoining Defendant from further contacting Plaintiff; and
- e. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT III – DEFENDANT'S VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT

56. Plaintiff restates and realleges paragraphs 1 through 55 as though fully set forth herein.

57. Plaintiff is a "consumer" as defined by Tex. Fin. Code Ann. § 392.001(1).

58. The alleged debt is a "debt" and a "consumer debt" as defined by Tex. Fin. Code Ann. § 392.001(2) as it is an obligation, or alleged obligation, arising from a transaction for personal, family, or household purposes.

59. Defendant is a "debt collector" as defined by Tex. Fin. Code Ann. § 392.001(6) and (7).

a. Violations of TDCA § 391.302

60. The TDCA, pursuant to Tex. Fin. Code Ann. § 392.302(4), states that “a debt collector may not oppress, harass, or abuse a person by causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.”

61. Defendant violated the TDCA when it called Plaintiff repeatedly despite her request that the calls cease. The repeated calls were made with the hope that Plaintiff would succumb to the harassing behavior and ultimately make a payment on the subject debt.

WHEREFORE, Plaintiff MISTY L. DELANEY requests that this Honorable Court:

- a. Declare that the practices complained of herein are unlawful and violate the aforementioned statute;
- b. Entitling Plaintiff to injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1);
- c. Award Plaintiff actual damages, pursuant to Tex. Fin. Code Ann. § 392.403(a)(2);
- d. Award Plaintiff punitive damages, in an amount to be determined at trial, for the underlying violations;
- e. Award Plaintiff costs and reasonable attorney fees as provided under Tex. Fin. Code Ann. § 392.403(b) ; and
- f. Award any other relief as the Honorable Court deems just and proper.

Plaintiff demands trial by jury.

Dated: October 29, 2019

Respectfully Submitted,

/s/ Alexander J. Taylor

/s/ Marwan R. Daher

/s/ Omar T. Sulaiman

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