

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CANDY L. STORMER,

Plaintiff,

v.

PATENAUDE & FELIX, A PROFESSIONAL
CORPORATION,

Defendant.

CIVIL COMPLAINT

CASE NO. 4:20-cv-00092

DEMAND FOR JURY TRIAL

COMPLAINT

NOW comes CANDY L. STORMER (“Plaintiff”), by and through her attorneys, Sulaiman Law Group, Ltd. (“Sulaiman”), complaining as to the conduct of PATENAUDE & FELIX, A PROFESSIONAL CORPORATION (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Fair Debt Collection Practices Act (“FDCPA”) under 15 U.S.C. §1692 *et seq.*, and the Texas Debt Collection Act (“TDCA”) under Tex. Fin. Code Ann. § 392 *et seq.*, for Defendant’s unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the FDCPA. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C §1692, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for Plaintiff’s state law claim pursuant to 28 U.S.C. §1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Southern District of Texas and a substantial portion the events or omissions giving rise to the claims occurred within the Southern District of Texas.

PARTIES

4. Plaintiff is a consumer over 18 years-of-age residing in Houston, Texas, which is located within the Southern District of Texas.

5. Defendant is a law firm and identifies at self as “a debt collector, as defined by 15 U.S.C. §1692(a)(6).”¹ Defendant is organized under the laws of the State of California with its principal place of business at 4545 Murphy Canyon Road, 3rd Floor, San Diego, California. Defendant regularly collects upon consumers located in the State of Texas.

6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

7. The instant action stems from Defendant’s attempts to collect upon a defaulted credit card debt (“subject consumer debt”) that Plaintiff purportedly owes to TD Bank USA, N.A. (“TD Bank”).

8. Plaintiff incurred the subject consumer debt to finance the purchase of personal and family household goods and/or services.

9. On or around April 17th, 2019, Defendant mailed or caused to be mailed a collection letter in an attempt to collect upon the subject consumer debt. *See* Exhibit A is a true and accurate copy of Defendant’s April 17, 2019 collection letter to Plaintiff.

¹ <https://pandf.stratuspayments.net/>

10. In the collection letter, Defendant stated that the total balance due for the subject consumer debt was \$3,467.29. *See* Exhibit A.

11. Moreover, in the collection letter, Defendant tendered a proposed settlement offer to resolve the subject consumer debt for “SIXTY PERCENT (60%) of the total balance due as a full settlement” of the subject consumer debt. *Id.*

12. Defendant went on to represent that the settlement amount would be \$2,080.37. *Id.*

13. Consequently, Defendant’s settlement offer purported to result in debt forgiveness totaling \$1,386.92.

14. The collection letter specifically stated, “[u]pon receipt and clearing of funds, your account will be considered Settled in Full and *no more sums will be due* (emphasis added).” *Id.*

15. Moreover, Defendant placed urgency on the proposed settlement offer by representing it would expire after May 10, 2019.

16. Through its structure and contents, Defendant’s collection letter is designed to coerce Plaintiff into promptly making payment.

17. The Internal Revenue Service requires a creditor to file a 1099C form if it has forgiven at least \$600.00 in principal. 26 C.F.R. § 1.6050P-1(a) & (d)(2)–(3); 26 U.S.C. § 6050P.

18. As outlined above, Defendant’s settlement offer proposed to offer debt forgiveness of over \$600.00.

19. As a law firm and a sophisticated debt collector, Defendant is aware that its settlement offer would create a taxable event for Plaintiff.

20. Therefore, Defendant’s settlement offer is deceptive and misleading as it purported to convey a benefit to Plaintiff of by paying \$2,087.37 “no more sums will be due” when in fact Plaintiff could have to pay additional monies.

21. Defendant exerted undue pressure for Plaintiff to submit a prompt payment, even though Defendant knew or should have known that the benefit to Plaintiff would be burdened by a tax liability.

22. Accordingly, Plaintiff spoke with Sulaiman regarding the correspondence, resulting in pecuniary loss and expenditure of resources.

23. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not limited to, confusion and aggravation.

24. Plaintiff was subjected to deceptive and misleading conduct by Defendant which materially affected her decision to make payment.

COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

25. Plaintiff repeats and realleges paragraphs 1 through 24 as though fully set forth herein.

26. Plaintiff is a "consumer" as defined by 15 U.S.C. §1692a(3) of the FDCPA.

27. Defendant is a "debt collector" as defined by §1692a(6) of the FDCPA, because it regularly use the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.

28. Defendant is engaged in the business of collecting or attempting to collect, directly or indirectly, defaulted debts owed or due or asserted to be owed or due to others.

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

a. Violations of FDCPA § 1692e

30. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt."

31. In addition, this section enumerates specific violations, such as:

“The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.” 15 U.S.C. §1692e(10).

32. Defendant violated §1692e and e(10) when it used deceptive means to collect and/or attempt to collect the subject consumer debt. Specifically, it was deceptive for Defendant to present its settlement offer as conveying a benefit to Plaintiff and that no additional funds would be owed when Defendant knew that Plaintiff could pay additional monies in the form of a tax on the forgiven portion of the subject consumer debt. The deceptive nature of Defendant’s settlement offer is highlighted by its demand for prompt payment, which would not allow consumers sufficient time to consider the negative implications of accepting Defendant’s settlement offer. Therefore, Defendant’s goal was to deceptively induce Plaintiff into making a payment by falsely purporting that Plaintiff would only be benefited if she accepted Defendant’s settlement offer.

b. Violations of FDCPA § 1692f

33. The FDCPA, pursuant to 15 U.S.C. §1692f, prohibits a debt collector from using “unfair or unconscionable means to collect or attempt to collect any debt.”

34. Defendant violated §1692f when it unfairly attempted to collect upon the subject consumer debt. Any reasonable fact finder will conclude that Defendant acted unfairly when it knowingly included statements in its April 17, 2019 collection letter that misrepresented Plaintiff’s liability under the subject consumer debt if she accepted Defendant’s settlement offer.

35. As pled in paragraphs 22 through 24, Plaintiff has been harmed and suffered damages as a result of Defendant’s illegal actions.

WHEREFORE, Plaintiff, CANDY L. STORMER, respectfully requests that this Honorable Court enter judgment in her favor as follows:

- 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);
- e. Enjoining Defendant from further contacting Plaintiff; and
- f. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT

36. Plaintiff restates and realleges paragraphs 1 through 35 as though fully set forth herein.

37. Plaintiff is a “consumer” as defined by Tex. Fin. Code Ann. § 392.001(1).

38. Defendant is a “[t]hird-party debt collector” as defined by Tex. Fin. Code Ann. § 392.001 (7).

39. The subject consumer debt is 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.

a. Violations of TDCA § 392.304

40. The TDCA, pursuant to Tex. Fin. Code Ann. § 392.304(19) prohibits a debt collector from “using any . . . false representation or deceptive means to collect a debt or obtain information concerning a consumer.”

41. Defendant violated the TDCA by employing false representations and deceptive means to induce Plaintiff into submitting a payment towards the subject consumer debt. It was deceptive for Defendant to communicate its settlement offer to Plaintiff as only conveying a benefit to Plaintiff. As a law firm and sophisticated debt collector, Defendant knew that acceptance of its offer would

have resulted in a taxable event for Plaintiff, which Defendant deceptively concealed from Plaintiff through false representations.

WHEREFORE, Plaintiff, CANDY L. STORMER, respectfully requests that this Honorable Court enter judgment in her favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Entitling Plaintiff to injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1);
- c. Awarding Plaintiff actual damages, pursuant to Tex. Fin. Code Ann. § 392.403(a)(2);
- d. Awarding Plaintiff punitive damages, in an amount to be determined at trial, for the underlying violations;
- e. Awarding Plaintiff costs and reasonable attorney fees, pursuant to Tex. Fin. Code Ann. § 392.403(b);
- f. Enjoining Defendant from further contacting Plaintiff; and
- g. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: January 10, 2020

Respectfully submitted,

s/ Nathan C. Volheim

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