

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI



Jacob Overby, individually and on)
behalf of all others similarly situated,)

Plaintiff,)

v.)

Retail Merchants Association, Inc.,)
a Louisiana corporation, d/b/a Credit)
Bureau of Louisiana,)

Defendant.)

No. 3:17cv636 DPJ-FKB

Jury Demanded

CLASS ACTION COMPLAINT

Plaintiff, Jacob Overby, individually and on behalf of all others similarly situated, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), for a finding that Defendant's form debt collection letter violated the FDCPA, and to recover damages, and alleges:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to § 1692k(d) of the FDCPA, and 28 U.S.C. § 1331.
2. Venue is proper in this District because: a) the acts and transactions occurred here; b) Plaintiff resides here; and, c) Defendant transacts business here.

PARTIES

3. Plaintiff, Jacob Overby ("Overby"), is a citizen of the State of Mississippi, residing in the Southern District of Mississippi, from whom Defendant attempted to collect a delinquent consumer debt, which he allegedly owed for medical services.

4. Defendant, Retail Merchants Association, Inc., d/b/a Credit Bureau of Louisiana (“CBL”), is a Louisiana corporation that acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or the telephone to collect, or attempt to collect, delinquent consumer debts, including delinquent consumer debts in the Southern District of Mississippi. In fact, CBL was acting as a debt collector as to the delinquent consumer debt it attempted to collect from Plaintiff.

FACTUAL ALLEGATIONS

5. Defendant CBL sent Mr. Overby a collection letter dated August 1, 2016 demanding payment of a delinquent consumer debt that he allegedly owed, which stated, in pertinent part:

* * *

ALL UNPAID ACCOUNT INFORMATION IS ROUTINELY SUBMITTED TO THE CREDIT BUREAU OF LOUISIANA, WHERE IT IS RECORDED AND REPORTED TO ANY AND ALL INQUIRING CREDIT GRANTORS.

* * *

A copy of this letter is attached as Exhibit C.

6. Specifically, Defendant CBL’s letter makes it appear as if it is a credit reporting agency, when, in fact, it is not. This threat violates the FDCPA and is material because if a debt is being credit reported it impairs a consumer’s credit rating and their ability to obtain credit, which constitutes a real risk of financial harm, see, Sayles v. Advance Recovery Systems, 2017 U.S.App. LEXIS 12080 at [*6]-[*7] (5th Cir. 2017). This is information that affects a consumer’s decision making process in how to respond to a debt collection attempt.

7. Defendant’s collection actions complained of herein occurred within one year of the date of this Complaint.

8. Defendant’s collection communications are to be interpreted under the “unsophisticated” or “least sophisticated” consumer standard, see, Taylor v. Perrin, Landry &

Durand, 103 F.3d 1232, 1236 (5th Cir. 1997); Goswami v. Am. Collection Enter., 377 F.3d 488, 495 (5th Cir. 2004); and McMurray v. ProCollect, 687 F.3d 665, 669 (5th Cir. 2012).

COUNT I
Violation Of § 1692e of The FDCPA --
Making A False, Deceptive Or Misleading Statement

9. Plaintiff adopts and realleges ¶¶ 1-8.

10. 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 a debt, including, but limited to the false representation or implication that a debt collector operates a credit reporting agency, see 15 U.S.C. § 1692e(16).

11. Defendant's form debt collection letter makes it appear as if it is a credit reporting agency, when, in fact, it is not -- it is only making a report to itself. Thus, CBL has made a false, deceptive or misleading statement, in violation of § 1692e of the FDCPA.

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

COUNT II
Violation Of § 1692f Of The FDCPA --
Unfair Or Unconscionable Collection Actions

13. Plaintiff adopts and realleges ¶¶ 1-8.

14. Section 1692f of the FDCPA prohibits a debt collector from using any unfair or unconscionable means to collect or attempt to collect a debt. See, 15 U.S.C. §1692f.

15. Defendant, by making it appear as if it is a credit reporting agency, when, in fact it is not, used unfair or unconscionable means to collect a debt, in violation of § 1692f of the FDCPA.

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

CLASS ALLEGATIONS

17. Plaintiff, Jacob Overby, brings this action individually and as a class action on behalf of all persons similarly situated in the State of Mississippi from whom Defendant attempted to collect a delinquent consumer debt, allegedly owed for medical services, via the same form collection letter (Exhibit A), that Defendant sent to Plaintiff, from one year before the date of this Complaint to the present. This action seeks a finding that Defendant's form letter violates the FDCPA, and asks that the Court award damages as authorized by § 1692k(a)(2) of the FDCPA.

18. Defendant CBL regularly engages in debt collection, using the same form collection letter it sent Plaintiff Overby, in its attempts to collect delinquent consumer debts from other persons.

19. The Class consists of more than 35 persons from whom Defendant CBL attempted to collect delinquent consumer debts, by sending other consumers the same form collection letter they sent Plaintiff Overby.

20. Plaintiff Overby's claims are typical of the claims of the Class. Common questions of law or fact raised by this class action complaint affect all members of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

21. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendant has

acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

22. Plaintiff Overby will fairly and adequately protect and represent the interests of the Class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require extended contact with the members of the Class, because Defendant's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff Overby has retained counsel experienced in litigation.

PRAYER FOR RELIEF

Plaintiff, Jacob Overby, individually and on behalf of all others similarly situated, prays that this Court:

1. Certify this action as a class action;
2. Appoint Plaintiff Overby as Class Representative of the Class, and his attorneys as Class Counsel;
3. Find that Defendant's form collection letter violated the FDCPA;
4. Enter judgment in favor of Plaintiff Overby and the Class, and against Defendant, for statutory damages, costs, and reasonable attorneys' fees as provided by § 1692k(a) of the FDCPA; and,
5. Grant such further relief as deemed just.

JURY DEMAND

Plaintiff, Jacob Overby, individually and on behalf of all others similarly situated,
demands trial by jury.

Jacob Overby, individually and on
behalf of all others similarly situated,

By: /s/ EDWIN WOODS JR. 
BOND BOTES & WOODS, PC.

Dated: July 31, 2017

PREPARED BY:

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