

UNITED STATES DISTRICT COURT
Southern District of Texas
Houston Division

TAMEKA LOMAS
Plaintiff

V.

ROCK CREEK CAPITAL, LLC
And NOACK LAW FIRM, PLLC
Defendant

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CASE NUMBER:

DEMAND FOR JURY TRIAL

PLAINTIFF’S ORIGINAL COMPLAINT

Preliminary Statement

1. Plaintiff, Tameka Lomas, (“Plaintiff”) brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”), as well as under the Texas Debt Collection Act, Tex. Finance Code § 392.001, *et seq.* (“TDCA”), The Texas Finance Code § 348.501 and the Texas Deceptive Trade Practices Act, Subchapter E, Chapter 17, Business & Commerce Code (“DTPA”), to obtain actual damages, statutory damages, injunctive relief, declaratory relief, and other relief for the Defendants’ violations of the FDCPA, the TDCA and the DTPA.

JURISDICTION AND VENUE

2. This is an action under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* against Defendants for engaging in unfair or deceptive acts or practices in violation of the FDCPA, 15 U.S.C. § 1692.

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1331, 1337(a), and 1367.

4. Venue is proper in the United States District Court for the Southern District because the acts and transactions occurred here, and the Defendants transact business here.

DEFINITIONS

5. As used in reference to the FDCPA, the terms "creditor," "debt," and "debt collector" are defined in § 803 of the FDCPA, 15 U.S.C. § 1692a and 15 U.S.C. § 1692j(a) and (b).

THE PARTIES

6. Defendant, Rock Creek Capital, LLC, (Rock Creek) is a purchaser of charged off debts, a foreign for-profit corporation, and is in the business of collecting consumer debt in the Southern District of Texas. The principal purpose of Rock Creek's business is the collection of consumer debts using the mail and telephone. Rock Creek buys up charged off debts and then files lawsuits en masse to collect consumer debts. Rock Creek is a "debt collector" as defined by 15 U.S.C. § 1692a(6) and Tex. Finance Code § 392.001(6). ROCK CREEK is also a "third-party debt collector" as defined by Tex. Finance Code § 392.001(7). They are a holder of a motor vehicle retail installment sales contract as defined by Tex. Finance Code § 348.001(3)(B). Rock Creek can be served by and through their registered agent Corporation Service Company dba CSC Lawyers Incorporating Service Company, located at 211 E. 7th Street, suite 620, Austin, TX 78701-3218.

7. Defendant Noack Law Firm, PLLC (Noack) is a law firm engaged in the collection of debts. They collect debts for others by filing lawsuits in Texas Courts. Noack is a "debt collector" as defined by 15 U.S.C. § 1692a(6) and Tex. Finance Code § 392.001(6). Noack is also a "third-party debt collector" as defined by Tex. Finance Code § 392.001(7). Noack can be served by and through their registered agent Craig Noack, located at 25819 Enchanted Dawn, San Antonio, TX 78255.

8. Plaintiff, Tameka Lomas, (“Lomas”) is an individual who resides in Harris County, Texas and is a consumer as defined by 15 U.S.C. §1692(a)(3) and the Tex. Finance Code § 392.001(1)

FACTUAL ALLEGATIONS

9. On or about November 15, 2022 Defendant Rock Creek filed suit against Lomas in a case styled Rock Creek Capital LLC v Tameka Lomas cause number 224200408701, in the Harris County Justice of the Peace Court for Precinct 4 Place 2, hereinafter referred to as “the state court case.” The Case was filed by Defendant Noack on behalf of Rock Creek. In this case Rock Creek is claiming to be the assignee of the deficiency balance of a motor vehicle retain installment sales contract between Plaintiff and DPAC Acceptance LTD.

10. According to the State Court Petition the collateral, a vehicle, was repossessed, sold at auction, and the proceeds were applied to the balance due. Rock Creek filed suit for the deficiency balance.

11. The Plaintiff’s Petition fails to identify the original creditor in this case.

12. There is no contract between Rock Creek and Plaintiff.

13. Rock Creek claims to be a holder of this note.

14. Rock Creek admits that the contract that they are suing on a Retail Installment Contract for a motor vehicle.

15. Upon information and belief, Rock Creek is wholesale buyer of charged off debts. The debt that is in question for the breach of contract for the purchase of a vehicle. As such it is a Retail Installment Sales Contract as defined by Tex. Fin. Code § 348.001(6). Rock Creek is therefore a Holder as defined by Tex. Fin. Code § 348.001(3)(B). As such, Rock Creek is required

to have a license with the Texas Office of Consumer Commissioner. See Tex. Fin. Code § 348.501(2). Upon information and belief, Rock Creek does not possess such a license, and therefore this suit is illegal.

16. It has been held that a debt collection complaint that “fail[s] to identify ... the original creditor, is both deceptive and material under the least sophisticated consumer standard, [and thus] constitutes a violation of § 1692e.” *Heathman v. Portfolio Recovery Associates, LLC*, 2013 WL 3746111, at *4-5 (S.D. Cal. July 15, 2013) (recounting examples of the “easy to conceive potential frustration to the least sophisticated consumer [posed by] failure to identify the original creditor”); *Thomas v. Portfolio Recovery Associates*, Case No. 12CV1188-WQH-WMc, Dkt. No. 35 at 8-9, 11 (S.D. Cal. Aug. 12, 2013) (“The Court finds PRA’s failure to identify the original creditor in the State Court Complaint ... constitute[s] a violation of the FDCPA.”); *Tourgeman v. Collins Fin. Services, Inc.*, 2011WL 3176453, at *5 (S.D. Cal. July 26, 2011) (holding that failure to identify “the original creditor unquestionably could ‘frustrate a consumer’s ability to intelligently choose his or her response,’” and stating that “the Court can conceive of nary a situation more confusing than receiving a dunning letter identifying an original creditor to whom the consumer never was indebted.”); accord *Isham v. Gurstel, Staloch & Chargo, P.A.*, 738 F.Supp.2d 986, 996 (D. Ariz. 2010) (“To preserve the protections and policies of the FDCPA, it is important to know the proper identity of the creditor. Knowing a creditor’s identity allows the ‘least sophisticated consumer’ to make more informed decisions on how to communicate with the creditor and avoid being misled.”); *Wallace v. Washington Mut. Bank, F.A.*, 683 F.3d 323,327 (6th Cir. 2012) (“District courts have decided, and we agree, that a false representation of the creditor’s name may constitute a false representation ... under Section 1692e” because it may “cause confusion and delay in trying to contract the proper party concerning payment ... and resolution

of the problem.”) (internal quotation omitted); *Schneider v. TSYs Total Debt Management, Inc.*, 2006 WL 1982499, at *3 (E.D. Wisc. July 13, 2006) (“without the full and complete name of the creditor ... the unsophisticated debtor would be confused by the collection letter.”); *Hepsen v. J.C. Christensen and Associates, Inc.*, 2009 WL 3064865, at *5 (M.D. Fla. Sept. 22, 2009) (“Imposing liability based on a statement incorrectly identifying the name of a creditor comports with the purposes of the FDCPA.”).

17. The foregoing acts and omissions of the Defendants were undertaken by them willfully, intentionally, knowingly, and/or in gross disregard of the rights of the Plaintiffs.

18. The foregoing acts and omissions of the Defendants were undertaken by them indiscriminately and persistently, as part of their regular and routine collection efforts, and without regard to or consideration of the identity or rights of the Plaintiffs.

19. As a proximate result of the foregoing acts and omissions of the Defendants, Plaintiff has suffered actual damages and injury, including but not limited to, stress, humiliation, mental anguish and suffering, and emotional distress, for which Plaintiff should be compensated in an amount to be proven at trial.

20. All of Defendants’ actions occurred within one year of the date of this Complaint. Moreover, the actions made by Defendant in his collection attempts are to be interpreted under the “unsophisticated consumer” standard. (See, Bartlett v. Heibl, 128 F.3d 497, 500 (7th Cir. 1997); Chauncey v. JDR, 118 F.3d 516, 519 (7th Cir. 1997); Avila v. Rubin, 84 F.3d 222, 226 (7th Cir. 1996); and Gammon v. GC Services, LTD. Partnership, 27 F.3d 1254, 1257 (7th Cir. 1994).

Respondeat Superior Liability

21. The acts and omissions of Defendants, and the other debt collectors employed as agents by Defendants who communicated with Plaintiff as more further described herein, were committed within the time and space limits and within the sphere of their respective employments in their agency relationships with their principal, the Defendants.

22. The acts by Defendants and their agents were incidental to, or of the same general nature as, the responsibilities these agents were authorized to perform by Defendants in collecting consumer debts.

23. By committing these acts against Plaintiff, these agents of Defendants were motivated to benefit their principals, the Defendants.

24. Defendants are therefore liable to Plaintiff through the Doctrine of Respondeat Superior for the intentional, reckless, and negligent acts, errors, and omissions done in violation of state and federal law by his collection employees, including but not limited to violations of the FDCPA and Texas law, in their attempts to collect this debt from Plaintiffs.

COUNT I

Lack of Licensing under Texas Finance Code §348.501

25. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendants' violations of the Texas Finance Code include, but are not limited to the following:

26. Defendant Rock Creek is in violation of Tex. Fin. Code § 348.501(2). They are a holder, or at least claim to be, of a Motor Vehicle Retail Installment Sales Contract. Their standing in the State Court case is in dispute. They are not a credit union, nor do they possess a license to be a holder of a Motor Vehicle Retail Installment Sales Contract as required by Texas Law.

27. Damages for this are statutorily set forth in Tex. Fin. Code § 349.003.

28. Defendant Noack is a law firm engaged in the business of debt collection. As such they knew, or should have known of the statutory requirement, but chose to file this lawsuit anyway, in the hopes of obtaining either a default judgment or facing an pro se debtor.

29. Plaintiff incurred actual damages in having to spend money for retaining counsel to defend her from an illegally filed state court lawsuits.

COUNT II
Violations of Texas Finance Code §392.48.501

30. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendants' violations of the TDCA include, but are not limited to the following:

31. By threatening, or in this case, actually filing a lawsuit that they did not have the legal capacity to file, Rock Creek and Noack violated Texas Finance Code § 393.301(8).

32. By representing that they had the legal capacity to bring this suit, Rock Creek and Noack violated Texas Finance Code 392.304(8) and (9).

COUNT III
Violations Of The FDCPA

33. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendants' violations of the FDCPA include, but are not limited to the following:

a. In violation of 15 U.S.C. § 1692d, the Defendants engaged in conduct the natural consequence of which was to harass, oppress, or abuse a person in connection with the collection of a debt, thereby causing the Plaintiff to incur attorney's fees to defend the suit, which failed to properly plead assignment.

b. In violation of 15 U.S.C. § 1692e, 15 U.S.C. § 1692e (2)(a), 15 U.S.C. § 1692e(10), and the "least sophisticated consumer standard," the Defendants used objectively false representations and/or false, deceptive, or misleading representations or

means in connection with the collection of a consumer debt. Specifically, Defendant failed to identify the original creditor by name in the form pleading filed in the State Court Case. Furthermore, Defendant's misrepresented their legal ability to even bring this lawsuit.

- c. In violation of 15 U.S.C. § 1692e(5) and the "least sophisticated consumer standard," the Defendants threatened to take an action (and took such an action) which cannot legally be taken or that is not intended to be taken. Defendant filed a lawsuit over a contract that it had no legal licensing to be the holder of.

33. Under 15 U.S.C. § 1692k, Defendants' violations of the FDCPA render them jointly and severally liable to Plaintiff for statutory damages, actual damages, costs and reasonable attorney's fees.

34. Under 15 U.S.C. § 1692k, Defendants' violations of the FDCPA render it liable to Plaintiff for statutory damages, actual damages, costs, and reasonable attorney's fees.

COUNT IV
Violations of the Texas Deceptive Trades Practices Act

35. The Plaintiff repeat, reallege, and incorporate by reference the foregoing paragraphs.

The Defendants' violations of the DTPA include, but are not limited to the following:

- a. Pursuant to Tex. Fin. Code Ann. § 392.404, the Defendant's violations of the TDCA also constitute a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, ("DTPA") and is actionable under that subchapter.

36. Under Tex. Bus. & Com. Code Ann. § 17.50(b)(2), the Defendants' violations of the DTPA render it liable to Plaintiff for injunctive relief and reasonable attorney's fees.

JURY DEMAND

37. Plaintiff respectfully requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, Tomeka Lomas, prays that this Court:

1. Declare that Defendants' debt collections practices violated the FDCPA, TDCA and the DTPA;
2. Enjoin the Defendants' actions which violate the TDCA and the DTPA;
3. Enter judgment in favor of Plaintiff and against Defendants for statutory damages, actual damages, treble damages, costs, and reasonable attorney's fees as provided by 15 U.S.C. § 1692k(a), Tex. Fin. Code Ann. § 392.403, and/or Tex. Fin. Code 349.003.
4. Grant such further relief as deemed just.

Respectfully submitted,

/s/ James A. Foley

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