

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CHRISTINA FABEC)
on behalf of herself and all similarly-situated)
consumers,)
)
Plaintiff,)
)
)
v.)
)
DEBT MANAGEMENT PARTNERS, LLC, and)
CAPITAL MANAGEMENT HOLDINGS, LLC,)
)
Defendants.)

CASE NO.:

JUDGE:

**NOTICE OF AND PETITION
FOR REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441, 1443 and 1446, defendant Debt Management Partners, LLC (“DMP”), by and through its counsel, with consent of co-defendant Capital Management Holdings, LLC, hereby files this Notice of Petition to remove the above-entitled action from the Court of Common Pleas for Cuyahoga County, Ohio to the United States District Court for the Northern District of Ohio, Eastern Division. Removal is based on federal question jurisdiction. Plaintiff’s complaint asserts claims and seeks relief based upon, *inter alia*, DMP’s alleged violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”) and the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”). In support of this notice, DMP asserts the following:

1. Plaintiff originally filed this case in the Court of Common Pleas for Cuyahoga County, Ohio on or about June 5, 2018, under Case No. CV 18-898852, Summons and Index No. 35568986. Pursuant to 28 U.S.C. § 1446(a), copies of the summons and complaint, all process, pleadings, and orders are attached hereto as **Exhibit A**.

2. Plaintiff's complaint alleges various claims purportedly arising out of, *inter alia*, attempts by DMP and/or co-defendant Capital Management Holdings, LLC ("Capital") to collect a debt from plaintiff and asserts claims specifically based on alleged violation of federal law, including the FDCPA and the TCPA. Because plaintiff's claims arise under the laws of the United States, namely the FDCPA and TCPA, removal of plaintiff's entire case is appropriate pursuant to 28 U.S.C. §§ 1441(a)-(c) and 1443.

3. Plaintiff's state law claims also purport to arise out of alleged unlawful attempts by DMP and Capital to collect a debt from plaintiff, individually and as a member of a purported class pursuant to Ohio Civ. R. 23. This Court has supplemental jurisdiction over any such claims pursuant to 28 U.S.C. § 1367 because said claims arise out of the same operative facts as plaintiff's federal law claims and "form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

4. Service of process upon DMP has not yet been effected pursuant to Ohio Civ. R. 4.3 (Process: out-of-state service) and DMP specifically reserves all rights relating thereto. As evidenced by the Federal Express tracking sheet, attached hereto as **Exhibit B**, DMP's counsel, Zdarsky, Sawicki & Agostinelli LLP, though not DMP's registered agent for service of process, received a Federal Express package bearing tracking number 7812 9505 6836 on June 8, 2018. Said Federal Express package enclosed plaintiff's summons and complaint and constituted the first time DMP, by and through its counsel, had notice of this lawsuit.

5. DMP is timely filing this notice of removal within thirty days after receiving, by and through its counsel, notice of plaintiff's lawsuit. 28 U.S.C. § 1446(b).

6. This Court is part of “the district and division embracing the place where” the original action was filed and is pending. *See*, 28 U.S.C. § 1441(a); 28 U.S.C. § 1446(a); 28 U.S.C. § 115(a)(2).

7. Co-defendant Capital consents to the removal of this action from the Court of Common Pleas for Cuyahoga County, Ohio to the United States District Court for the Northern District of Ohio, Eastern Division. Attached hereto as **Exhibit C** is the declaration of Daniel D’Elia, President of Capital Management, dated July 6, 2018.

8. In accordance with 28 U.S.C. §§ 1446(b) and 1446(d), DMP will promptly serve on plaintiff’s counsel and file with the Court of Common Pleas in Cuyahoga County, a true and correct copy of this notice of removal. Such filing will also result in electronic service of the removal papers upon plaintiff’s counsel.

9. The prerequisites for removal under 28 U.S.C. § 1441 have been met.

10. If any question arises as to the propriety of the removal of this action, DMP requests the opportunity to present a brief and oral argument in support of its position that this case is removable.

11. Notwithstanding this Notice of and Petition for Removal, defendants do not waive any defenses to the claims asserted in the plaintiff’s summons and complaint, nor do defendants concede that plaintiff has adequately pled any claims upon which relief may be granted, either individually, or as a member of any purported class.

WHEREFORE, defendant DMP hereby removes the entire action bearing case number CV 18-898852 from the Court of Common Pleas, Cuyahoga County, Ohio, to this Court, the United States District Court for the Northern District of Ohio, Eastern Division for all further proceedings.

Respectfully submitted,

/s/ Dennis M. Coyne

DENNIS M. COYNE (0030758)
DENNIS M. COYNE CO., L.P.A.
1428 Hamilton Avenue
Cleveland, OH 44114
(216) 781-9162 (telephone)
(216) 781-9160 (facsimile)
Denniscoyne@yahoo.com

/s/ Leslie E. Wargo

LESLIE E. WARGO (0073112)
WARGO LAW, LLC
1501 North Marginal Road, Suite 182
Cleveland, OH 44114
(216) 403-3350 (telephone)
(216) 744-1816 (facsimile)
Leslie@Wargo-Law.com

Counsel for Defendant Debt Management
Partners, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 2018, a copy of the foregoing was filed electronically via the CM/ECF. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system. In addition, a copy of the foregoing was sent via regular U.S. mail and electronic mail to Ronald I. Frederick, Esq., Frederick & Berler, LLC, 767 East 185th Street, Cleveland, Ohio 44119 ronf@clevelandconsumerlaw.com, counsel for Plaintiff.

/s/ Leslie E. Wargo
Leslie E. Wargo (0073112)

EXHIBIT A

CASE NO.
CV18898852

D1 FX

SUMMONS NO.
35568986

Rule 4 (B) Ohio

Rules of Civil
Procedure

SUMMONS

CHRISTINA FABEC
VS

PLAINTIFF

DEPT MANAGEMENT PARTNERS LLC, ET AL

DEFENDANT

DEPT MANAGEMENT PARTNERS LLC
C/O ZDARSKY, SAWICKI & AGOSTINELLI
LLP
350 MAIN STREET - SUITE 1600
BUFFALO NY 14202

You have been named defendant in a sums
complaint (copy attached hereto) filed in Cuyahoga
County Court of Common Pleas, Cuyahoga County
Justice Center, Cleveland, Ohio 44113, by the
plaintiff named herein.

You are hereby summoned and required to
answer the complaint within 28 days after service
of this summons upon you, exclusive of the day of
service.

Said answer is required to be served on:



Plaintiff's Attorney

MICHAEL L FINE
3684 SILSBY ROAD

UNIVERSITY HEIGHTS, OH 44118

Said answer is required to be served on Plaintiff's
Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court
within 3 days after service of said answer on
plaintiff's attorney.

If you fail to do so, judgment by default will be
rendered against you for the relief demanded in the
complaint.

Case has been assigned to Judge:

BRIAN J CORRIGAN

Do not contact judge. Judge's name is given for
attorney's reference only.

NAILAH K. BYRD
Clerk of the Court of Common Pleas



DATE SENT
Jun 6, 2018

By _____
Deputy

COMPLAINT FILED 06/05/2018





NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

**New Case Electronically Filed:
June 5, 2018 11:53**

By: RONALD I. FREDERICK 0063609

Confirmation Nbr. 1402835

CHRISTINA FABEC

CV 18 898852

vs.

DEPT MANAGEMENT PARTNERS LLC, ET AL

Judge: BRIAN J. CORRIGAN

Pages Filed: 18

common law causes of action, which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices, and allows consumers a private right of action.

2. This action is also brought for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (the "TCPA"), which prohibits calls using automatic telephone dialing systems or artificial or prerecorded voices to cellular telephones without the express permission of the recipient, and which creates a private right of action to redress violations thereof. Congress has found that such unwanted automated calls are a "nuisance and an invasion of privacy, regardless of the type of call." *Id.*

VENUE AND JURISDICTION

3. Whereas the events and circumstances leading up to and asserted in this Complaint arose in Cuyahoga County, this Court is the proper venue under Civ. R. 3(B)(3).
4. As Defendants transact business in Ohio and/or caused tortuous injury to Plaintiff in Ohio, Defendants are subject to this Court's personal jurisdiction.
5. Whereas the laws noted above invest Plaintiff with a private cause of action and permit Ohio Courts of competent jurisdiction to hear said claims, this Honorable Court has subject matter jurisdiction of these claims.

PARTIES

6. Ms. Fabec is, and was at all relevant times herein, a resident of Cuyahoga County, Ohio.
7. Ms. Fabec is a consumer as that term is defined in 15 U.S.C. §1692a(3).
8. Ms. Fabec is a consumer as that term is defined in R.C. §1345.01(D).
9. On information and belief, DMP is a New York corporate entity.
10. DMP is in the business of purchasing charged off debt and collecting the same through various agents, including Capital Management.

11. DMP's principal business and purpose is the collection of debts.
12. On information and belief, the debts which DMP generally purchases and then collects are subprime or high interest consumer debts, such a payday loans.
13. As such, DMP knowingly retains collection agents that use oppressive techniques to obtain payment from the economically-disadvantaged consumers of these loans, who have no or limited means of repayment.
14. DMP is a debt collector under the first definition of that term as it is defined in 15 U.S.C. §1692a(6), namely "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts."
15. DMP is also supplier as that term is defined in R.C. §1345.01(C).
16. On information and belief, Capital Management is a New York corporate entity.
17. Capital Management is in business of collecting default consumer debts.
18. Capital Management is an agent of DMP.
19. Capital Management is a debt collector under either or both definitions of that term as defined in 15 U.S.C. §1692a(6): "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."
20. Capital Management is a supplier as that term is defined in R.C. §1345.01(C).
21. In connection with their unlawful activities described herein, Defendants operate in concert with one another for a common purpose.
22. On information and belief, via the terms of their agreement, DMP has a right to control the manner and means of collection and activities engaged in by Capital Management, and

DMP exercises that control by monitoring the conduct of Capital Management and withdrawing accounts when a complaint is made by a consumer.

23. As such, given the nature of the relationship between the parties and nature of the debts being collected, DMP, if it did not engage in the conduct at issue itself, knew of or should have known of, approved of, and authorized or acquiesced to, the calls and the aggressive collection techniques and threats being used by Capital Management (and/or Capital Management's subagents) as described herein.
24. Therefore, DMP is liable for all conduct of Capital Management (and/or the subagents of Capital Management) as described herein pursuant to *respondeat superior* and the law of agency.

FACTS RELATED TO MS. FABEC

25. Within the past year, Ms. Fabec received calls on her cell telephone from Capital Management and/or its agents, demanding money in connection with an allegedly-outstanding debt.
26. Capital Management initiated these calls using an automatic telephone dialing system and/or by employing the use of an electronic or prerecorded voice.
27. Ms. Fabec believes this to be true, because she could hear delay when she would pick up a call and/or an electronic or prerecorded voice on messages.
28. Ms. Fabec never authorized Capital Management to call her on her cell phone.
29. Furthermore, Ms. Fabec requested the calls to cease.
30. Nonetheless, Capital Management continued to call and made at least thirty unauthorized calls to Ms. Fabec's cell phone.

31. Capital Management demanded sums in connection to an alleged payday loan through CashnetUSA.
32. Capital Management demanded sums to which neither it nor DMP was not entitled by law and/or contract.
33. Capital Management threatened to find Mr. Fabec at her job.
34. Capital Management made this threatened to contact at Ms. Fabec's place of employment and to contact her employer for the purpose of embarrassing and engendering fear in her.
35. Capital Management used derogatory and disrespectful language and tone while speaking with Mr. Fabec and called her "stupid."
36. When Ms. Fabec asked Capital Management for a bill or other documentation to support its claim for money, Capital Management said that it would not send anything until she made an initial payment.
37. When Ms. Fabec asked Capital Management's agent for the name of the company calling, the agent responded "Global" and would give no further information.
38. Capital Management did not properly identify itself or DMP.
39. Capital Management did not identify itself as a debt collector.
40. Capital Management threatened Ms. Fabec, telling her that a civil claim was currently pending against her and that she would imminently be receiving service of process.
41. Capital Management made its threats, misrepresentations, and harassing and offensive statements for the purpose of extorting payment from Ms. Fabec.
42. Capital Management made similar calls to Ms. Fabec's husband, father, brother, and brother-in-law, leaving or conveying similar messages and threats.

43. On or about April 11, 2018, Capital Management left the following message on Ms. Fabec's cell phone:

Ms. Christina Fabec, I'm calling again to inform you that you have the opportunity to contact the firm handling your claim and have chosen not to. Ma'am, at this point, I have verified an address for service of process. There is a claim against you. You have until I reach you personally to address this matter with mediation. Again, they can be reached at 877-357-2423. Your claim number listed on this order is 495168. Christina Fabec this is your final notification before I reach you personally.

44. Capital Management left additional, substantially-similar, messages on Ms. Fabec's cell phone multiple times.
45. Capital Management's calls to Ms. Fabec have been harassing.
46. Ms. Fabec felt threatened by Capital Management's actions, and she has sustained emotional and related physical injury, including, without limitation, fear, anxiety, embarrassment, frustration, annoyance, inconvenience, and nervousness.
47. Capital Management did not send Ms. Fabec a statement of her rights as required by law within five days of its initial communication with her, or at any time afterward.

FACTUAL ALLEGATIONS OF THE CLASS

48. On information and belief, Defendants (individually and collectively, directly or via an agent, and in coordination with one another) regularly attempt to collect consumer debts in Ohio and nationally.
49. Defendants do so by using the mail and telephone.
50. Defendants (individually and collectively, directly or via an agent, and in coordination with one another) initiate telephone calls to consumers by an automatic telephone dialing system and/or by employing the use of an electronic or prerecorded voice.
51. Defendants and their agents fail to identify themselves as debt collectors.

52. Moreover, Defendants (individually and collectively, directly or via an agent, and in coordination with one another) unlawfully use false names and misrepresent themselves to be mediators, investigators, legal processors, and other entities which they are not.
53. In their collection efforts, Defendants (individually and collectively, directly or via an agent, and in coordination with one another), by custom and practice, use threats and misrepresentations to obtain money from consumers.
54. These threats include threats of nonexistent pending civil litigation and threats to contact third parties – such as employers – for the purpose of embarrassment and harassment.
55. Defendants and their agents, by custom and practice, regularly contact third parties about consumer debts to harass and bother consumers.
56. Defendants engage in these practices using and following a script and/or training, so that their practices and the content of their communications are uniform among consumers contacted.
57. Defendants regularly fail to send to consumers the notice of their rights required under 15 U.S.C. § 1692g after their initial communications with the consumers.
58. By engaging in these acts, Defendants knowingly violate the CSPA, FDCPA and the TCPA.
59. On information and belief, using these unlawful tactics, Defendants unlawfully obtain funds in consumer payments, engender fear, and cause emotional damage to consumers.
60. Defendants engage in these practices and conduct for a common purpose and goal, with coordination, knowledge, and cooperation of one another.

61. In connection with the facts, events, and averments herein, Defendants acted willfully and maliciously, with spite and ill will, and/or with reckless disregard for the rights of consumers in general, and Ms. Fabec in particular.

CLASS ACTION ALLEGATIONS

62. Pursuant to Civ. R. 23 of the Ohio Rules of Civil Procedure, Ms. Fabec brings this action on behalf of herself and three classes of other persons similarly-situated, to remedy the ongoing unlawful, unfair, and/or deceptive business practices alleged herein, and to seek redress on behalf of all those persons who have been harmed thereby.

1. The “**FDCPA Class**” is defined as all consumers, who:

- a. Defendants called and caused to be called in the one year preceding the filing of the original complaint in this matter;
- b. Where Defendants left or conveyed a message to the consumer or a third-party, substantially similar to the above-quoted message left for Ms. Fabec, and/or where Defendants -
 - 1) Failed to fully identify themselves by their correct and lawful name and with proper contact information, and/or;
 - 2) Failed to identify themselves as a debt collector, and/or;
 - 3) Referred to themselves as a process server or mediation company, and/or;
 - 4) Stated the consumers inaction would negatively impact their rights, and/or;
 - 5) Threatened or insinuated imminent or pending litigation, and/or;
 - 6) Threatened to contact an employer or third-party.
- c. And/or, where Defendants failed to send a notice of rights to a Consumer after an initial communication.

2. The “**CSPA Class**” is defined as all consumers in Ohio who:

- a. Defendants called and caused to be call in the two years preceding the filing of the original complaint in this matter;

- d. Where Defendants left or conveyed a message to the consumer or a third-party, substantially similar to the above-quoted message left for Ms. Fabec, and/or where Defendants -
 - 1) Failed to fully identify themselves by their correct and lawful name and with proper contact information, and/or;
 - 2) Failed to identify themselves as a debt collector, and/or;
 - 3) Referred to themselves as a process server or mediation company, and/or;
 - 4) Stated the consumers inaction would negatively impact their rights, and/or;
 - 5) Threatened or insinuated imminent or pending litigation, and/or;
 - 6) Threatened to contact an employer or third-party.
 - e. And/or, where Defendants failed to send a notice of rights to a Consumer after an initial communication.
3. The "TCPA Class" is defined as all persons, who
- a. Defendants called, or caused to be called, a consumer's cell phone in the four years preceding the filing of the original complaint in this matter; and
 - b. Where the calls were placed using an automated telephone system or employed the use of an electronic or prerecorded voice; and
 - c. Where the Defendants did not previously obtain the Consumer's express consent to receive the call; or, where such consent was previously received, the Consumer requested orally or in writing for the Defendants' calls to stop.
62. The class members are so numerous that joinder of all members would be impracticable. The exact size of the proposed classes and the identity of the members, believed to be in the hundreds or thousands, thereof, is readily ascertainable from Defendants' business records.
63. There is a community of interest among the members of the proposed classes in that there are questions of law and fact common to the proposed classes that predominate over

questions affecting only individual members. These questions include but are not limited to whether, *inter alia*:

- a. Defendants and their agents are debt collectors;
 - b. Defendants or their agents fail to identify themselves with their proper name and contact information;
 - c. Defendants or their agents fail to identify themselves as a debt collector in calls and messages;
 - d. Defendants or their agents regularly threaten or insinuate imminent or pending litigation;
 - e. Defendants or their agents falsely refer to themselves as process servers or a mediation firm;
 - f. Defendants or their agents regularly tell the consumers that their inaction will result in a forfeiture of rights;
 - g. Defendants or their agents regularly contact or threaten to contact employers or third-parties;
 - h. Defendants place the calls using an automated telephone system or employ the use of an electronic or prerecorded voice;
 - i. Defendants place calls to cell phones without first obtaining the express consent of call recipients;
 - j. Defendant fail to stop calling consumers upon their requests to stop;
 - k. The conduct and threats described herein violates the FDCPA;
 - l. The conduct and threats described herein violates the CSPA;
 - m. The conduct described herein violated the TCPA.
64. Ms. Fabec's claims are typical of those of the classes she seeks to represent, and she will fairly and adequately represent the interests of the classes. Ms. Fabec is represented by counsel competent and experienced in both consumer protection and class action litigation.
65. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual class members may be relatively

small compared to the expense and burden of litigation, it would be impracticable and economically infeasible for class members to seek redress individually. The prosecution of separate actions by the individual class members, even if possible, would create a risk of inconsistent or varying adjudications with respect to individual class members against the Defendants.

FIRST CLAIM FOR RELIEF
(FDCPA Violations)

66. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as if fully rewritten herein.
67. Defendants' conduct (individually and/or collectively, directly or through an agent) of calling Ms. Fabec and the members of the FDCPA and CSPA Classes without properly identifying themselves as debt collectors, by misidentifying themselves, with threats of litigation, with threats to contact third-parties, with misrepresentations about their rights, by failing to send a follow-up letter with a proper statement of rights, and/or by other actions as detailed above, violated the following provisions of the FDCPA:
 - a. 15 U.S.C. §1692b(1), failing to identify themselves accurately and properly when contacting third parties;
 - b. 15 U.S.C. §1692c(b), communicating with third parties;
 - c. 15 U.S.C. §1692d, engaging in conduct having the natural consequence to "harass, oppress, or abuse" Ms. Fabec in connection with the collection of an alleged debt;
 - d. 15 U.S.C. §1692d(2), using profane and derogatory language in communication with consumers, such as calling them names like "stupid";
 - e. 15 U.S.C. §1692d(5), causing their telephone to ring repeatedly and engaging him in conversation repeatedly for the purpose of annoyance, harassment, and abuse;

- f. 15 U.S.C. §1692d(6), placing telephone calls without meaningful disclosure of the caller's identity – and in fact by misrepresenting their identity;
 - g. 15 U.S.C. §1692e, engaging in the conduct, which is false, deceptive and/or misleading;
 - h. 15 U.S.C. §1692e(2)(A), (4), & (5), mischaracterizing the legal status of a debt and threatening legal action that cannot be legally taken, and that Defendants did not intend to take;
 - i. 15 U.S.C. §1692e(10), using deceptive means to collect a debt as described herein.
 - j. 15 U.S.C. §1692e(11), failing to properly disclose that Defendant is a debt collector, collecting on a debt;
 - k. 15 U.S.C. §1692e(14), posing as a process server;
 - l. 15 U.S.C. §1692f, engaging in the conduct, which is unfair and unconscionable;
 - m. 15 U.S.C. §1692f(5), calling a consumer's cell phone;
 - n. 15 U.S.C. §1692g, failing to send consumers a notice of their rights.
68. Defendants (individually and/or collectively, directly or through an agent) violated the FDCPA in other ways as described herein and to be proven at trial.
69. As a result of the foregoing, Ms. Fabec and the FDCPA class have suffered actual damages as described herein and to be proven at trial.
70. Defendants' violations of the FDCPA were willful and malicious, with spite and ill will, and/or with reckless disregard for the rights of Ms. Fabec and the Class.
71. Under the FDCPA, Ms. Fabec and the FDCPA Class are entitled to recover statutory damages, actual damages, attorney's fees, and costs for the violations described herein.

SECOND CLAIM FOR RELIEF
(CSPA Violations)

72. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as if fully rewritten herein.
73. As described herein and to be proven at trial, Defendants (individually and/or collectively, directly or through an agent) engaged in unfair and deceptive acts in violation of R.C. §1345.02 *et seq.*, by engaging in such acts, without limitation, as misidentifying themselves, falsely threatening litigation, threats to contact third-parties, and misrepresentation consumers' rights to them.
74. As described herein and to be proven at trial, Defendants (individually and/or collectively, directly or through an agent) engaged in unfair and unconscionable acts in violation of R.C. §1345.03 *et seq.*, by engaging in such acts, without limitation, as misidentifying themselves, falsely threatening litigation, threats to contact third-parties, and misrepresentation consumers' rights to them.
75. Specifically, as described above, Defendants (individually and/or collectively, directly or through an agent) engaged in conduct which violates the FDCPA.
76. By violating the FDCPA, Defendants (individually and/or collectively, directly or through an agent) have violated the CSPA. *See e.g. Jarvis v. First Resolution Inv. Corp.*, 2012-Ohio-5653 (9th App. Dist. 2012) ("The interrelationship between the FDCPA and the OCSA is well established").
77. Each of Defendants' (individually and/or collectively, directly or through an agent) violations of the FDCPA is a separate violation of the CSPA.

78. The Public Inspection File of the Ohio Attorney General contains cases declaring the acts and practices described herein to be illegal, including, but not limited to, *Liggins v. May Company*, 53 Ohio Misc. 21 (Cuy. Cty. 1977), PIF 10000310.
79. Defendants' violations of the CSPA were willful and malicious, with spite and ill will, and/or with reckless disregard for the rights of Ms. Fabec and the Class.
80. Under the CSPA, Defendants are liable to Christina Fabec and the CPSA Class for damages and other relief as provided by statute.

THIRD CLAIM FOR RELIEF
(TCPA Violations)

81. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as if fully rewritten herein.
82. As described above, within the last four years, Defendants (individually and/or collectively, directly or through an agent) called have called Ms. Fabec and members of the TCPA Class on their cellular telephones using an ATDS or predictive dialer and/or by using a prerecorded or artificial voice.
83. Defendants (individually and/or collectively, directly or through an agent) placed these calls to Ms. Fabec and members of the TCPA Class without their express permission and/or continued to place these calls after being directed to cease calling and knowing there was no consent to continue the calls.
84. As such, each call placed to Ms. Fabec and members of the TCPA Class was made in violation of the TCPA and is a separate violation thereof.
85. Ms. Fabec and members of the TCPA Class are entitled to an award of \$500 in statutory damages *for each call* placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

86. Moreover, because Defendants (individually and/or collectively, directly or through an agent) knowingly placed the calls to the cell phones of Ms. Fabec and members of the TCPA Class without permission, Ms. Fabec and members of the TCPA Class are entitled to treble damages, i.e. \$1,500, for each call pursuant to 47 U.S.C. § 227(b)(3)(C).
87. Defendants' violations of the TCPA were willful and malicious, with spite and ill will, and/or with reckless disregard for the rights of Ms. Fabec and the Class.
88. Thus, under the TCPA, Defendants are liable to the Ms. Fabec and the TCPA Class for a minimum of \$500 per phone call and up to \$1,500 per call since the calls were made knowingly.

FOURTH CLAIM FOR RELIEF
(Invasion of Privacy)

89. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as if fully rewritten herein.
90. By calling Ms. Fabec and member of the various classes incessantly, by calling with threats, by calling their cell phones, by contacting third-parties, and by disclosing private alleged debt information, all as described herein, Defendants (individually and/or collectively, directly or through an agent) intruded into private lives and activities of Mr. Fabec and class members in an outrageous manner and in a manner that would cause (and did cause) mental suffering, shame, or humiliation to a person of ordinary sensibilities.
91. Resultingly, Defendants are liable to Mr. Fabec and members of each class for damages, punitive damages, and attorney's fees.

FIFTH CLAIM FOR RELIEF
(Civil Conspiracy)

92. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as if fully rewritten herein.
93. As describe above, DMP and Capital Management have maliciously combined together, as buyer and contracted-collector of debts, to injured consumers by extorting or otherwise extracting or attempting to extract monies from them by unlawful means, namely through violation of the above-enumerated laws.
94. As buyer and collector respectively, neither DMP nor Capital Management was competent alone to cause the injuries described herein.
95. Resultingly, Defendants are liable to Mr. Fabec and the members of each class for damages, punitive damages, and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

- A. An order certifying the FDPCA Class, the CSPA Class, and the TCPA Class;
- B. An order appointing Frederick & Berler LLC as class counsel;
- C. A judgment for the actual damages suffered by Ms. Fabec and member of each of the classes;
- D. Issuance of a declaratory judgment declaring that the acts and practices complained of herein are unfair, deceptive and/or unconscionable;
- E. Issuance of a declaratory judgment declaring that Defendants violated the CSPA;
- F. An order preliminarily and permanently enjoining Defendants from engaging in the practices challenged herein;

- G. An award to Ms. Fabec and members of the FDCPA class of statutory damages of \$1,000 each, up to an aggregate of \$500,000 or 1% of the net value of Defendants for their various violations of the FDCPA pursuant to 15 U.S.C. 1692k(a)(2)(B);
- H. An award to Ms. Fabec and each member of the TCPA Class of \$1,500 for each call made to them in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C);
- I. An award to Ms. Fabec and the three Classes of punitive damages as determined by the Court;
- J. That this Court award attorney's fees, costs, and pre- and post-judgment interest to Ms. Fabec and the Classes pursuant to the FDCPA, CSPA, and other applicable law;
- K. An award to Ms. Fabec a class representative incentive award to be determined by the Court; and
- L. That this Honorable Court awards to Ms. Fabec such other and further relief as may be just and equitable.

Respectfully submitted,

s/ Ronald I. Frederick

Ronald I. Frederick (#0063609)

Michael L. Berler (#0085728)

Michael L. Fine (#0077131)

Frederick & Berler LLC

767 East 185th Street

Cleveland, Ohio 44119

Phone: (216) 502-1055

Fax: (216) 609-0750

ronf@clevelandconsumerlaw.com

mikeb@clevelandconsumerlaw.com

michaelf@clevelandconsumerlaw.com

Attorneys for Plaintiff

JURY DEMAND

Plaintiff hereby requests a trial by jury as to all issues of fact in this action.

Respectfully submitted,

s/ Ronald I. Frederick

Ronald I. Frederick (#0063609)

Frederick & Berler LLC


One of the Attorneys for Plaintiff

EXHIBIT B

7/6/2018

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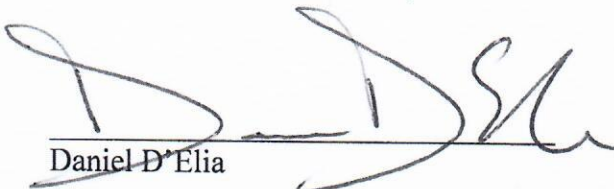
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EXHIBIT C

I declare under penalty of perjury that the foregoing statements are true and correct. I have executed this declaration on July 6, 2018 in Staten Island, Richmond County, New York.


Daniel D'Elia

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Christina Fabec

(b) County of Residence of First Listed Plaintiff Cuyahoga County, OH (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ronald I. Frederick, Frederick & Berler, LLC, 767 East 185th St. Cleveland, Ohio 44119

DEFENDANTS

Debt Management Partners, LLC Capital Management Holdings, LLC

County of Residence of First Listed Defendant Erie County, NY (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Dennis M. Coyne, Dennis M. Coyne, Esq., 1428 Hamilton Ave. Cleveland, Ohio 44114

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. sections 1331, 1367, 1441, 1443, 1446. Brief description of cause: Fair Debt Collection Practices Act (15 U.S.C. 1692) and Telephone Consumer Protection Act (47 U.S.C. 227)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 500,000.00. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/06/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Leslie E. Wargo (0073112)

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

- 1. [checked] General Civil
2. [] Administrative Review/Social Security
3. [] Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. RELATED OR REFILED CASES. See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action: [] is RELATED to another PENDING civil case [] is a REFILED case [] was PREVIOUSLY REMANDED

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) Resident defendant. If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) Non-Resident defendant. If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY: Cuyahoga County, Ohio

(3) Other Cases. If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

[]

AKRON

(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)

[checked]

CLEVELAND

(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)

[]

YOUNGSTOWN

(Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

[]

TOLEDO

(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Accusing Debt Collectors of FDCPA, TCPA Violations Moved to Ohio Fed. Court](#)
