

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

CASE NO.

██████████ *on behalf of herself
and all others similarly situated,*

Plaintiff,

**CLASS ACTION COMPLAINT AND
TRIAL BY JURY DEMAND**

v.

CHOICE PHYSICIANS BILLING, INC.,

Defendant.

NATURE OF ACTION

1. Plaintiff ██████████ (“Plaintiff”) brings this putative class action on behalf of ██████████ all others similarly situated against Defendant Choice Physicians Billing, Inc. (“Defendant”) pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* and the Florida Consumer Collection Practices Act, Fla. Stat. § 559.55 *et seq.*

JURISDICTION, VENUE, AND STANDING

2. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331 and 28 U.S.C. § 1367(a).

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff’s action occurred in this district, where Plaintiff resides in this district, and where Defendant transacts business in this district.

4. Congress is “well positioned to identify intangible harms that meet minimum Article III requirements,” thus “Congress may ‘elevat[e] to the status of legally cognizable

injuries concrete, *de facto* injuries that were previously inadequate in law.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016) (quoting *Lujan v. Defs of Wildlife*, 504 U.S. 555, 578 (1992)).

5. “Without the protections of the FDCPA, Congress determined, the ‘[e]xisting laws and procedures for redressing these injuries are inadequate to protect consumers.’” *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 WL 3671467, at *3 (N.D. Ill. July 11, 2016) (quoting 15 U.S.C. § 1692(b)). Thus, a debt collector’s breach of a right afforded a consumer under the FDCPA causes an injury in fact for Article III standing, even where the harm may be intangible. *See id.*; *Church v. Accretive Health, Inc.*, 654 F. App’x 990, 995 (11th Cir. 2016) (holding deprivation of information under § 1692g was substantive, concrete violation).

THE FAIR DEBT COLLECTION PRACTICES ACT

6. Congress enacted the FDCPA to “eliminate abusive debt collection practices, to ensure that debt collectors who abstain from such practices are not competitively disadvantaged, and to promote consistent state action to protect consumers.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 577 (2010) (citing 15 U.S.C. § 1692(e)).

7. The FDCPA is described as a strict liability statute which “typically subjects debt collectors to liability even when violations are not knowing or intentional.” *Owen v. I.C. Sys., Inc.*, 629 F.3d 1263, 1270 (11th Cir. 2011).

8. “A single violation of the Act is sufficient to subject a debt collector to liability under the Act.” *Lewis v. Marinosci Law Grp., P.C.*, No. 13-61676-CIV, 2013 WL 5789183, at *2 (S.D. Fla. Oct. 29, 2013).

9. The Eleventh Circuit applies the “least sophisticated consumer” standard to determine whether a debt collector’s communication violates the FDCPA. *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1175 (11th Cir. 1985).

10. This objective standard does not consider “whether the particular plaintiff-consumer was deceived or misled; instead, the question is ‘whether the ‘least sophisticated consumer’ would have been deceived’ by the debt collector’s conduct.” *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254, 1258 (11th Cir. 2014) (quoting *Jeter*, 760 F.2d at 1177 n.11)).

THE FLORIDA CONSUMER COLLECTION PRACTICES ACT

11. Similarly, the FCCPA, Florida’s consumer protection statute, was enacted as a means of regulating the activities of consumer collection agencies within the state. *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1190 (11th Cir. 2010).

12. “The FCCPA is to be construed in a manner that is protective of the consumer.” *Laughlin v. Household Bank, Ltd.*, 969 So. 2d 509, 512 (Fla. 1st Dist. App. 2007). With this in mind, the FCCPA is meant to be read, “in addition to the requirements and regulations of the federal act [the FDCPA]. In the event of any inconsistency between any provision of this part and any provision of the federal act, the provision which is more protective of the consumer or debtor shall prevail.” Fla. Stat. § 559.552.

13. The FCCPA provides that “[i]n collecting consumer debts, no person shall . . . Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not

legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.” Fla. Stat. § 559.72(9).

14. In addition to actual and statutory damages, the FCCPA also provides for punitive damages. “It clearly appears to have been the intent of the Legislature to provide a remedy for a class of injury where damages are difficult to prove and at the same time provide a penalty to dissuade parties . . . from engaging in collection practices which may have been heretofore tolerated industry wide.” *Laughlin*, 969 So. 2d at 513 (quoting *Harris*, 338 So. 2d at 200).

PARTIES

15. Plaintiff is a natural person who at all relevant times resided in the State of Florida, County of Lee, and City of Bonita Springs.

16. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

17. Plaintiff is a “consumer” as defined by Fla. Stat. § 559.55(8).

18. Defendant is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

19. Defendant is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by Fla. Stat. § 559.55(6).

20. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

21. Plaintiff is a natural person allegedly obligated to pay a debt.

22. Plaintiff's alleged obligation arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, personal medical services (the “Debt”).

23. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts.

24. Defendant regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

25. Defendant has no other substantial business purpose unrelated to collecting or assisting in the collection of debts from consumers.

26. Alternatively, if Defendant is the creditor, then Defendant used a name other than its own which would indicate that a third person is collecting or attempting to collect Plaintiff's Debt.

27. In 2012, Plaintiff was involved in a vehicle collision and was rear-ended.

28. Due to the collision, Plaintiff had to seek medical services at the Injury Treatment Center of Naples.

29. At the time of the collision, Plaintiff had insurance with USAA Casualty Insurance Company.

30. In connection with the collection of the Debt, Defendant sent Plaintiff a letter dated February 8, 2018.

31. A true and accurate copy of Defendant's February 8, 2018 letter is attached as Exhibit A.

32. The February 8, 2018 letter was Defendant's initial communication with Plaintiff with respect to the Debt.

33. Defendant's February 8, 2018 letter states: "If you notify us in writing within **30 days of the date of this notice** that the debt or any portion thereof is disputed, we will obtain verification of the debt, and we will mail a copy of the verification to you." Exhibit A (emphasis added).

34. However, 15 U.S.C. § 1692g(a)(4) provides that Plaintiff has to notify Defendant in writing within thirty days after receipt of the notice and not thirty days of the date of the notice. *See* 15 U.S.C. § 1692g(a)(4).

35. Defendant's February 8, 2018 letter does not disclose that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

36. Defendant's February 8, 2018 letter demands Plaintiff to make a payment toward the Debt and provides instructions to Plaintiff on how to make a payment.

37. Defendant's February 8, 2018 letter states that the balance of the Debt is comprised of services rendered during November 13, 2012 to April 30, 2013.

38. The applicable statute of limitations in Florida for medical services is five years. *See* Fla. Stat. § 95.11(2)(b).

39. Therefore, a portion of the Debt is no longer enforceable by judicial means.

40. Since Defendant provided the dates the services were rendered, Defendant knew that a portion of the Debt was no longer enforceable by judicial means.

41. However, Defendant's February 8, 2018 letter failed to disclose to Plaintiff that a portion of the Debt was past the statute of limitations, nor did it otherwise disclose that the Debt, or a portion of the Debt, could not be judicially enforced.

42. Plaintiff, and the least sophisticated consumer, would reasonably interpret Defendant's February 8, 2018 letter as an indication that the Debt was still enforceable through judicial means.

CLASS ACTION ALLEGATIONS

43. Plaintiff repeats and re-alleges all factual allegations above.

44. Defendant's February 8, 2018 letter is based on a form or template used by Defendant to send initial collection letters to debtors (the "Template").

45. The Template fails to meaningfully convey, and/or is inconsistent with and overshadows, the disclosure required by 15 U.S.C. § 1692g(a)(4), in the same manner as Defendant did with Plaintiff above.

46. The Template asserts and attempts to enforce the right to collect a debt, at least a portion of which is barred from legal enforcement by the applicable statute of limitations, in the same manner as Defendant did with Plaintiff above.

47. The Template fails to disclose that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, in the same manner as Defendant did with Plaintiff above.

48. Defendant has used the Template to send collection letters to over 40 individuals in the State of Florida within the year prior to the filing of the original complaint in this matter.

49. Plaintiff brings this action on behalf of herself and all others similarly situated.

Specifically, Plaintiff seeks to represent the following class of individuals:

All persons with a Florida address, to whom Defendant sent a letter based upon the Template, within one year before the date of this complaint, in connection with the collection of a consumer debt.

50. Within this class, Plaintiff seeks to represent the following subclass of individuals:

All persons with a Florida address, to whom Defendant sent a letter based upon the Template, within one year before the date of this complaint, in connection with the collection of a consumer debt, and where at least a portion of the debt was past the applicable statute of limitations.

51. The class is averred to be so numerous that joinder of members is impracticable.

52. The exact number of class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery.

53. The class is ascertainable in that the names and addresses of all class members can be identified in business records maintained by Defendant.

54. There exists a well-defined community of interest in the questions of law and fact involved that affect the parties to be represented. These common questions of law and fact predominate over questions that may affect individual class members. Such issues include, but are not limited to: (a) the existence of Defendant's identical conduct particular to the matters at issue; (b) Defendant's violations of the FDCPA and FCCPA; (c) the availability of statutory penalties; and (d) attorneys' fees and costs.

55. Plaintiff's claims are typical of those of the class she seeks to represent.

56. The claims of Plaintiff and of the class originate from the same conduct, practice, and procedure on the part of Defendant. Thus, if brought and prosecuted individually,

the claims of the members of the class would require proof of the same material and substantive facts.

57. Plaintiff possesses the same interests and has suffered the same injuries as each class member. Plaintiff asserts identical claims and seeks identical relief on behalf of the unnamed class members.

58. Plaintiff will fairly and adequately protect the interests of the class and has no interests adverse to or which directly and irrevocably conflict with the interests of other members of the class.

59. Plaintiff is willing and prepared to serve this Court and the proposed class.

60. The interests of Plaintiff are co-extensive with and not antagonistic to those of the absent class members.

61. Plaintiff has retained the services of counsel who are experienced in consumer protection claims, as well as complex class action litigation, will adequately prosecute this action, and will assert, protect and otherwise represent Plaintiff and all absent class members.

62. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) and 23(b)(1)(B). The prosecution of separate actions by individual members of the class would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the action or could substantially impair or impede their ability to protect their interests.

63. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the parties opposing the

classes. Such incompatible standards of conduct and varying adjudications, on what would necessarily be the same essential facts, proof and legal theories, would also create and allow the existence of inconsistent and incompatible rights within the class.

64. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) in that Defendant has acted or refused to act on grounds generally applicable to the class, making final declaratory or injunctive relief appropriate.

65. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) in that the questions of law and fact that are common to members of the class predominate over any questions affecting only individual members.

66. Moreover, a class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint in that: (a) individual claims by the class members will be impracticable as the costs of pursuit would far exceed what any one plaintiff or class member has at stake; (b) as a result, very little litigation has commenced over the controversies alleged in this Complaint and individual members are unlikely to have an interest in prosecuting and controlling separate individual actions; and (c) the concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy.

COUNT I
VIOLATION OF 15 U.S.C. § 1692g(a)(4)

67. Plaintiff repeats and re-alleges each factual allegation contained in paragraphs 1 through 65 above.

68. A key provision of the FDCPA is § 1692g, which requires a debt collector to send, within five days of its initial communication with a consumer, a written notice which provides information regarding the debt and informs the consumer of his or her right to dispute

the validity of the debt, and/or request the name and address of the original creditor, within 30 days of receipt of the notice. *See* 15 U.S.C. § 1692g(a).

69. Congress adopted “the debt validation provisions of section 1692g” to guarantee that consumers would receive “adequate notice” of their rights under the FDCPA. *Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000) (citing *Miller v. Payco–General Am. Credits, Inc.*, 943 F.2d 482, 484 (4th Cir. 1991)).

70. This validation requirement is a “significant feature” of the law that aimed to “eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.” *See Hernandez v. Williams, Zinman & Parham PC*, 829 F.3d 1068, 1070 (9th Cir. 2016) (citing S. Rep. No. 95-382, at 4 (1977)).

71. “To comply with the FDCPA’s notice requirements, the notice must actually and effectively convey to the consumer his right to dispute the debt.” *In re Martinez*, 271 B.R. 696, 700 (S.D. Fla. 2001), *aff’d*, 311 F.3d 1272 (11th Cir. 2002).

72. By stating that the consumer must dispute the debt within 30 days from the date of the letter, as opposed to 30 days from the date the consumer receives the letter, Defendant impermissibly shortens the time period within which the consumer may act to dispute the debt.

73. By providing the consumer with less than 30 days from the date the consumer receives the letter to exercise his or her right to dispute the Debt, Defendant’s letter fails to effectively convey the notice required by 15 U.S.C. § 1692g(a)(4). *See Jacobson v. Healthcare Fin. Servs., Inc.*, 516 F.3d 85, 95 (2d Cir. 2008); *Chauncey v. JDR Recovery Corp.*, 118 F.3d 516, 519 (7th Cir. 1997).

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692g(a)(4) with respect to Plaintiff and the class ■■■ seeks to represent;
- c) Awarding Plaintiff and the class ■■■ seeks to represent actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the Court may allow in the amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);
- e) Awarding all other class members such amount as the Court may allow, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);
- f) Awarding Plaintiff and the class ■■■ seeks to represent, reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and Rule 23;
- g) Awarding Plaintiff and the class ■■■ seeks to represent, pre-judgment and post-judgment interest as permissible by law; and
- h) Awarding such other and further relief as the Court may deem proper.

COUNT II
VIOLATION OF 15 U.S.C. § 1692g(b)

74. Plaintiff repeats and re-alleges each factual allegation contained in paragraphs 1 through 65 above.

75. To ensure debt collectors' notices meaningfully convey consumers' rights under § 1692g, Congress has further declared that "[a]ny collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor." 15 U.S.C. § 1692g(b).

76. To comply with section 1692g, "the notice must not be overshadowed or contradicted by accompanying messages from the debt collector." *Caprio v. Healthcare Revenue Recovery Grp., LLC*, 709 F.3d 142, 148-49 (3d Cir. 2013).

77. The notice of a consumer's rights under § 1692g may be "overshadowed" by language within the validation letter itself. *See Gostony v. Diem Corp.*, 320 F. Supp. 2d 932, 938 (D. Ariz. 2003) ("The juxtaposition of two inconsistent statements' renders the notice invalid under § 1692g.") (quotations removed).

78. By stating that the consumer must dispute the debt within 30 days from the date of the letter, as opposed to 30 days from the date the consumer receives the letter, Defendant impermissibly shortens the time period within which the consumer may act to dispute the debt.

79. By providing the consumer with less than 30 days from the date the consumer receives the letter to exercise his or her right to dispute the Debt, Defendant's letter fails to effectively convey the notice required by 15 U.S.C. § 1692g(a)(4). *See Jacobson v. Healthcare Fin. Servs., Inc.*, 516 F.3d 85, 95 (2d Cir. 2008); *Chauncey v. JDR Recovery Corp.*, 118 F.3d 516, 519 (7th Cir. 1997).

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692g(b) with respect to Plaintiff and the class ■ seeks to represent;
- c) Awarding Plaintiff and the class ■ seeks to represent actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the Court may allow in the amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);
- e) Awarding all other class members such amount as the Court may allow, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);
- f) Awarding Plaintiff and the class ■ seeks to represent, reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and Rule 23;
- g) Awarding Plaintiff and the class ■ seeks to represent, pre-judgment and post-judgment interest as permissible by law; and
- h) Awarding such other and further relief as the Court may deem proper.

COUNT III
VIOLATION OF 15 U.S.C. § 1692e

80. Plaintiff repeats and re-alleges each factual allegation contained in paragraphs 1 through 65 above.

81. The FDCPA broadly prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt,” 15 U.S.C. § 1692e, including “the false representation of the character, amount, or legal status of any debt,” 15 U.S.C. § 1692e(2)(A), and “[t]he use of any false representation or deceptive means to collect or attempt to collect any debt.” 15 U.S.C. § 1692e(10).

82. “Whether a debt is legally enforceable is a central fact about the character and legal status of that debt.” *Buchanan v. Northland Grp., Inc.*, 776 F.3d 393, 399 (6th Cir. 2015) (quoting *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014)).

83. When a debt is past the statute of limitations, “collection efforts offer opportunities for mischief and deception.” *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 684 (7th Cir. 2017).

84. When faced with a demand for payment, “an unsophisticated consumer debtor who makes the first payment or who promises to make a partial payment is much worse off than he would have been without taking either step. If he then fails or refuses to pay further, he will face a potential lawsuit.” *Id.* at 685.

85. “[T]he FDCPA prohibits a debt collector from luring debtors away from the shelter of the statute of limitations without providing an unambiguous warning that an unsophisticated consumer would understand.” *Id.*

86. Misleading the consumer to believe that the debt is enforceable runs afoul of the FDCPA’s prohibition on false or misleading representations. *See Tatis v. Allied Interstate, LLC*, 882 F.3d 422, 428 (3d Cir. 2018); *Daugherty v. Convergent Outsourcing, Inc.*, 836 F.3d

507, 513 (5th Cir. 2016); *Buchanan v. Northland Grp., Inc.*, 776 F.3d 393, 397 (6th Cir. 2015); *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014).

87. Defendant violated 15 U.S.C. § 1692e by using false, deceptive, or misleading representations or means in connection with the collection of Plaintiff's Debt, including by conveying a false sense of urgency to Plaintiff to act, misleading the consumer as to whether the debt was enforceable and by coaxing the consumer to make a payment and revive the statute of limitations without an unambiguous disclaimer that doing so would restart the statute of limitations.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692e with respect to Plaintiff and the class she seeks to represent;
- c) Awarding Plaintiff and the class ■ seeks to represent actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the Court may allow in the amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);
- e) Awarding all other class members such amount as the Court may allow, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);

- f) Awarding Plaintiff and the class ■ seeks to represent, reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and Rule 23;
- g) Awarding Plaintiff and the class ■ seeks to represent, pre-judgment and post-judgment interest as permissible by law; and
- h) Awarding such other and further relief as the Court may deem proper.

**COUNT IV
VIOLATION OF 15 U.S.C. § 1692e(11)**

88. Plaintiff repeats and re-alleges each factual allegation contained in paragraphs 1 through 65 above.

89. The FDCPA “provides a non-exhaustive list of conduct that is a violation of § 1692e, including: ‘The failure to disclose in the initial . . . communication with the consumer . . . that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.’” *Moritz v. Daniel N. Gordon, P.C.*, 895 F. Supp. 2d 1097, 1106 (W.D. Wash. 2012) (citing 15 U.S.C. § 1692e(11)).

90. Debt collectors are strictly liable for failing to include this disclosure in their initial communication with a consumer. *Hart v. Credit Control, LLC*, 871 F.3d 1255, 1257-58 (11th Cir. 2017).

91. Defendant violated 15 U.S.C. § 1692e(11) by failing to state in its initial communication with the consumer that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692e(11) with respect to Plaintiff and the class ■■■ seeks to represent;
- c) Awarding Plaintiff and the class ■■■ seeks to represent actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the Court may allow in the amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);
- e) Awarding all other class members such amount as the Court may allow, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);
- f) Awarding Plaintiff and the class ■■■ seeks to represent, reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and Rule 23;
- g) Awarding Plaintiff and the class ■■■ seeks to represent, pre-judgment and post-judgment interest as permissible by law; and
- h) Awarding such other and further relief as the Court may deem proper.

**COUNT V
VIOLATION OF 15 U.S.C. § 1692f**

92. Plaintiff repeats and re-alleges each factual allegation contained in paragraphs 1 through 65 above.

93. The FDCPA also prohibits the use of unfair or unconscionable means to collect debts. *See* 15 U.S.C. § 1692f.

94. In addition to the non-exhaustive list of conduct that violates the FDCPA, § 1692f “allows a court to sanction improper conduct the FDCPA fails to address specifically.” *Turner v. Professional Recovery Services, Inc.*, 956 F. Supp. 2d 573, 580 (D.N.J. 2013) (quoting *Adams v. Law Offices of Stuckert & Yates*, 926 F. Supp. 521, 528 (E.D. Pa. 1996)).

95. Defendant violated 15 U.S.C. § 1692f by using unfair or unconscionable means against Plaintiff in connection with an attempt to collect an alleged debt, including by soliciting payment of a debt from Plaintiff, thus luring the consumer away from the shelter of the statute of limitations, without providing an unambiguous warning that an unsophisticated consumer would understand that doing so would restart the limitations period.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692f with respect to Plaintiff and the class she seeks to represent;
- c) Awarding Plaintiff and the class ■■■ seeks to represent actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the Court may allow in the amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);

- e) Awarding all other class members such amount as the Court may allow, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);
- f) Awarding Plaintiff and the class ■ seeks to represent, reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and Rule 23;
- g) Awarding Plaintiff and the class ■ seeks to represent, pre-judgment and post-judgment interest as permissible by law; and
- h) Awarding such other and further relief as the Court may deem proper.

COUNT VI
VIOLATION OF FLA. STAT. § 559.72(9)

96. Plaintiff repeats and re-alleges each factual allegation contained in paragraphs 1 through 65 above.

97. Defendant violated Fla. Stat. § 559.72(9) by claiming, attempting, or threatening to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist, including attempting and threatening to enforce a debt when at least a portion of the debt was not legally enforceable.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;

- b) Adjudging that Defendant violated Fla. Stat. § 559.72(9) with respect to Plaintiff and the class ■■■ seeks to represent;
- c) Awarding Plaintiff and the class ■■■ seeks to represent actual damages, pursuant to Fla. Stat. § 559.77(2);
- d) Awarding Plaintiff additional statutory damages, pursuant to Fla. Stat. § 559.77(2), in the amount of \$1,000.00;
- e) Awarding an aggregate award of additional statutory damages up to the lesser of \$500,000.00 or 1 percent of the Defendant's net worth for all remaining class members, pursuant to Fla. Stat. § 559.77(2);
- f) Awarding Plaintiff and the class ■■■ seeks to represent punitive damages, pursuant to Fla. Stat. § 559.77(2);
- g) Awarding Plaintiff and the class ■■■ seeks to represent such equitable relief as the Court deems necessary or proper, including enjoining Defendant from further violations of the FCCPA, pursuant to Fla. Stat. § 559.77(2);
- h) Awarding Plaintiff and the class ■■■ seeks to represent reasonable attorneys' fees and costs incurred in this action pursuant to Fla. Stat. § 559.77(2) and Rule 23;
- i) Awarding Plaintiff and the class ■■■ seeks to represent pre-judgment and post-judgment interest as permissible by law; and
- j) Awarding such other and further relief as the Court may deem just and proper.

TRIAL BY JURY

98. Plaintiff is entitled to and hereby demands a trial by jury.

Dated: June 19, 2018.

Respectfully submitted,

/s/ Alex D. Weisberg

Alex D. Weisberg

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EXHIBIT "A"

CPB CHOICE PHYSICIANS BILLING, INC.

February 8, 2018



Patient Name/ Account #: [Redacted]
Outstanding Account Balance of \$9813.46

Dear [Redacted]

Attached please find Choice Physicians Billing's Itemized Statement reflecting your outstanding balance in the amount of **\$9813.46** for treatment rendered at **Injury Treatment Center of Naples** for dates of service [Redacted]

You are responsible for payment of the outstanding balance of **\$9813.46**. Payment is due in full upon receipt of this letter. If you have any questions about this bill or need to make payment arrangements, please contact our office at 561-241-1971. Otherwise, please make your payment to **Injury Treatment Center of Naples** and mail to the address listed below. Please include your account number for reference.

Unless you dispute the validity of this debt or any portion thereof within 30 days after receipt of this notice, we will assume the debt is valid and proceed accordingly. If you notify us in writing within 30 days of the date of this notice that the debt or any portion thereof is disputed, we will obtain verification of the debt, and we will mail a copy of the verification to you.

For Credit Card:	Type of Credit Card: _____
	Credit Card # _____
	Name on Credit Card: _____
	Authorized Amount: \$ _____
	Authorized Signature: _____

Thank you for your immediate attention to this matter.

Sincerely,

Choice Physicians Billing

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

[Redacted]

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Alex D. Weisberg, Weisberg Consumer Law Group, P.A. 5846 S. Flamingo Road, #290, Cooper City FL 33330 (954) 337-1885

DEFENDANTS

Choice Physicians Billing, Inc.

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

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

Attorneys (If Known)

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 1692. Brief description of cause: Violation of the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/19/2018 SIGNATURE OF ATTORNEY OF RECORD s/ Alex D. Weisberg

FOR OFFICE USE ONLY

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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.