

US DISTRICT COURT
WESTERN DIST ARKANSAS
FILED

APR 27 2018

By DOUGLAS F. YOUNG, Clerk

Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

Heather Jones aka Heather Dempsey, individually and on behalf of all others similarly situated;

Plaintiff,

Civil Action No: 18-1025

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

-v.-

Economic Recovery Consultants, Inc. and

John Does 1-25,

Defendant(s).

Plaintiff Heather Jones aka Heather Dempsey (hereinafter, "Plaintiff" or "Jones"), brings this Class Action Complaint by and through her attorneys, RC Law Group, PLLC against Defendant Economic Recovery Consultants, Inc. (hereinafter "Defendant" or "ERC"), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff's counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff's personal knowledge.

INTRODUCTION/PRELIMINARY STATEMENT

1. Congress enacted the FDCPA in 1977 in response to the "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. §1692(a). At that time, Congress was concerned that "abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs, and to invasions of individual privacy." *Id.* Congress concluded that "existing laws...[we]re

inadequate to protect consumers," and that "the effective collection of debts" does not require "misrepresentation or other abusive debt collection practices." 15 U.S.C. §§ 1692(b) & (c).

2. Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to "insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." Id. § 1692(e). "After determining that the existing consumer protection laws were inadequate." Id. § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. Id. § 1692k.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692 et. seq. The Court also has pendent jurisdiction over the State law claims in this action pursuant to 28 U.S.C. § 1367(a).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) as this is where the majority of acts and omissions occurred.

NATURE OF THE ACTION

3. Plaintiff brings this class action on behalf of a class of consumers under §1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA"), and

4. Plaintiff is seeking damages and declaratory and injunctive relief.

PARTIES

5. Plaintiff is a resident of the State of Arkansas, County of Ouachita, residing at 162 B Ouachita Road #138, Stephens, AR 71764.

6. Defendant Economic Recovery Consultants, Inc. is a "debt collector" as the phrase is defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA with an address at 100 South Main Street, Suite 101, Searcy, AR 72143.

7. Upon information and belief, Defendant ERC is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

8. John Does 1-25, are fictitious names of individuals and businesses alleged for the purpose of substituting names of Defendants whose identities will be disclosed in discovery and should be made parties to this action.

CLASS ALLEGATIONS

9. Plaintiffs bring this claim on behalf of the following case, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).

10. The Class consists of:

- a. all individuals;
- b. who were sent an initial collection letter from Defendant ERC;
- c. whose letter deceptively directs the consumer to "mail payment to the address below" but fails to list an address, providing just a phone number for the collections department ;
- d. which letter was sent on or after a date one (1) year prior to the filing of this action and on or before a date twenty-one (21) days after the filing of this action.

11. The identities of all class members are readily ascertainable from the records of Defendants and those companies and entities on whose behalf they attempt to collect and/or have purchased debts.

12. Excluded from the Plaintiff Classes are the Defendants and all officer, members, partners, managers, directors and employees of the Defendants and their respective immediate families, and legal counsel for all parties to this action, and all members of their immediate families.

13. There are questions of law and fact common to the Plaintiff Classes, which common issues predominate over any issues involving only individual class members. The principal issue is whether the Defendants' written communications to consumers, in the forms attached as Exhibits A, violate 15 U.S.C. §§ 1692e and §§ 1692g.

14. The Plaintiffs' claims are typical of the class members, as all are based upon the same facts and legal theories. The Plaintiffs will fairly and adequately protect the interests of the Plaintiff Classes defined in this complaint. The Plaintiffs have retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiffs nor their attorneys have any interests, which might cause them not to vigorously pursue this action.

15. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- e. **Numerosity:** The Plaintiffs are informed and believe, and on that basis allege, that the Plaintiff Classes defined above are so numerous that joinder of all members would be impractical.
- f. **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Plaintiff Classes and those questions predominate over any questions or issues involving only individual class members. The principal

issue is whether the Defendants' written communications to consumers, in the forms attached as Exhibit A violate 15 USC §1692e and §1692g.

- g. **Typicality**: The Plaintiffs' claims are typical of the claims of the class members. The Plaintiffs and all members of the Plaintiff Classes have claims arising out of the Defendants' common uniform course of conduct complained of herein.
- h. **Adequacy**: The Plaintiffs will fairly and adequately protect the interests of the class members insofar as Plaintiffs have no interests that are adverse to the absent class members. The Plaintiffs are committed to vigorously litigating this matter. Plaintiffs have also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiffs nor their counsel have any interests which might cause them not to vigorously pursue the instant class action lawsuit.
- i. **Superiority**: A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

16. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff Classes predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

17. Depending on the outcome of further investigation and discovery, Plaintiffs may, at the time of class certification motion, seek to certify a class(es) only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

FACTUAL ALLEGATIONS

18. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered above herein with the same force and effect as if the same were set forth at length herein.

19. Some time prior to January 31, 2018, an obligation was allegedly incurred to Ouachita Co Medical Center.

20. The Ouachita Co Medical Center obligation arose out of transactions involving primarily personal, family or household purposes, specifically personal telecommunication services. Specifically, the debt was for medical services allegedly provided to Plaintiff.

21. The alleged Ouachita Co Medical Center obligation is a "debt" as defined by 15 U.S.C. § 1692a(5).

22. Defendant ERC is a "debt collector" as defined in 15 U.S.C. § 1692a(6) of the FDCPA.

23. Creditor Ouachita Co Medical Center contracted the Defendant ERC to collect the alleged debt.

24. Defendant ERC collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and internet.

Violation I – January 31, 2018 Collection Letter

25. On or around January 31, 2018 the Plaintiff received an initial collection letter from Defendant. (See Letter attached hereto as Exhibit A).

26. Defendant's letter was an attempt to collect a debt allegedly incurred by Plaintiff from Creditor Ouachita Co Medical Center.

27. When a debt collector solicits payment from a consumer, it must, within five days of an initial communication

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of the judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. 15 U.S.C. § 1692g(a).

28. The FDCPA further provides that "if the consumer notifies the debt collector in writing within the thirty day period . . . that the debt, or any portion thereof, is disputed . . . the debt collector shall cease collection . . . until the debt collector obtains verification of the

debt . . . and a copy of such verification is mailed to the consumer by the debt collector." 15 U.S.C. § 1692g(b).

29. Although a collection letter may track the statutory language, "the collector nevertheless violates the Act if it conveys that information in a confusing or contradictory fashion so as to cloud the required message with uncertainty." Russell v. EQUIFAX A.R.S., 74 F.3d 30, 35 (2d Cir. 1996) ("It is not enough for a debt collection agency to simply include the proper debt validation notice in a mailing to a consumer-- Congress intended that such notice be clearly conveyed."). Put differently, a notice containing "language that 'overshadows or contradicts' other language informing a consumer of her rights . . . violates the Act." Russell, 74 F.3d at 34.

30. The top paragraph of the letter reads "Please be advised that your account has been assigned to Economic Recovery Consultants, Inc. You are directed to address all future correspondence and payments concerning this account to the address below:"

31. The letter then fails to provide any address below this language where the consumer can dispute or get information about the debt.

32. Furthermore the only information given below that paragraph is the phone number for the collection department, implying that the dispute process can be done completely over the phone, which would significantly limit the consumer's dispute rights.

33. As a result of Defendant's deceptive and misleading statement Plaintiff has been harmed.

COUNT I
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. §1692e
et seq.

34. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

35. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.

36. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

37. Defendants made deceptive and misleading representations when they sought to collect a debt from Plaintiff but failed to provide an address where they could be contacted, in violation of 15 U.S.C. §§1692 and 1692e(10).

38. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692e et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

COUNT II
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C.
§1692g et seq.

39. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

40. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692g.

41. Pursuant to 15 USC §1692g, a debt collector:

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is

contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing –

- i. The amount of the debt;
- ii. The name of the creditor to whom the debt is owed;
- iii. A statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt-collector;
- iv. A statement that the consumer notifies the debt collector in writing within thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- v. A statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

42. The Defendant violated 15 U.S.C. §1692g, by failing to clearly display the address to send disputes as it stated it would, and only provided a phone number causing the consumers rights to be limited.

43. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692g et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

DEMAND FOR TRIAL BY JURY

44. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Heather Jones, individually and on behalf of all others similarly situated, demands judgment from Defendant Economic Recovery Consultants, Inc., as follows:

1. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative, and Yaakov Saks, Esq. as Class Counsel;
2. Awarding Plaintiff and the Class statutory damages;
3. Awarding Plaintiff and the Class actual damages;
4. Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
5. Awarding pre-judgment interest and post-judgment interest; and
6. Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: April 20, 2018

Respectfully Submitted,

RC LAW GROUP, PLLC

/s/ Yaakov Saks

Yaakov Saks, Esq.

285 Passaic Street

Hackensack, NJ 07601

Ph: (201) 282-6500

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ysaks@rclawgroup.com

Counsel for Plaintiff Heather Jones

EXHIBIT A

P.O. Box 200
 100 South Main St., Ste. 101
 Searcy, AR 72145-0200
 ADDRESS SERVICE REQUESTED

Economic Recovery Consultants, Inc.

Telephone (501)268-8600 • Toll Free (866)219-6274

January 31, 2018

HEATHER DEMPSEY

Account No.: 3401
 Balance Due: \$79.18

Dear HEATHER DEMPSEY:

Please be advised that your account has been assigned to Economic Recovery Consultants, Inc. You are directed to address all future correspondence and payments concerning this account to the address below:

Sincerely,
 Collections Department
 (501)268-8600 Toll Free 866-239-6274

This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

Creditor	Date of Service	Reference #	Amount
Quachita Co Medical Ctr M	11/13/2015	143	79.18
		Balance Due	\$79.18

More Accounts May be Listed on Reverse Side

173-1-2/08/16

*** Please detach and return with your payment. Retain top portion for your records. ***

PLEASE CIRCLE THE CREDIT CARD YOU WISH TO USE


  

CARD NUMBER	EXP. DATE
CARD HOLDER NAME	CVV
SIGNATURE	AMOUNT PAID

We also offer payment over the phone or by visiting our website at www.economic-recoveryinc.com using your debit card, credit card or checking account for no additional charge.

Account No.: 3401
 Balance Due: \$79.18

INSURANCE COMPANY	INS. CO. PHONE
INSURANCE COMPANY ADDRESS	STATE ZIP
POLICY #	POLICY HOLDER NAME
SUBSCRIBER NAME	HOME PHONE
DATE OF BIRTH	SOCIAL SECURITY #
	GROUP #


 Economic Recovery Consultants, Inc.
 P.O. Box 200
 Searcy, AR 72145-0200

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Economic Recovery Consultants Sent Collection Letter Without Contact Information](#)