UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

JAMES A. SMITH, on behalf of himself and others similarly situated,	:	
Plaintiff,	:	**Civil Action No.:** 1:17-cv-2291
v.	:	
COHN, GOLDBERG & DEUTSCH, LLC,	:	**JURY TRIAL DEMANDED**
Defendant.	:	

COMPLAINT—CLASS ACTION

NATURE OF ACTION

1. This is a class action brought under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, for the benefit of Maryland consumers who have been the subject of debt collection efforts by Cohn, Goldberg & Deutsch, LLC ("Defendant").

2. Congress enacted the FDCPA in 1977 to "eliminate abusive debt collection practices by debt collectors," 15 U.S.C. § 1692(e), and in response to "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors," which Congress found to have contributed "to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692(a).

3. As the Consumer Financial Protection Bureau ("CFPB")—the federal agency tasked with enforcing the FDCPA—explained, "[h]armful debt collection practices remain a significant concern

today. In fact, the CFPB receives more consumer complaints about debt collection practices than about any other issue."[1]

4. Over one-third of the complaints received by the CFPB involved debt collectors' attempts to collect debts that consumers did not owe.[2]

5. To combat this serious problem in the debt collection industry, the FDCPA requires debt collectors to send consumers "validation notices" containing certain information about their alleged debts and consumers' rights. 15 U.S.C. § 1692g(a).

6. A debt collector must send this notice "[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt," unless the required information was "contained in the initial communication or the consumer has paid the debt." *Id.*, § 1692g(a).

7. Pertinent here, the validation notice must advise the consumer of "the name of the creditor to whom the debt is owed." *Id.*, § 1692g(a)(2).

8. And if, based upon the required disclosures, the consumer disputes the debt in writing within 30 days of receiving such a notice, the debt collector must then "cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt" and mails the consumer a copy of that verification. *Id.*, § 1692g(b).

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1 *See* Brief for the CFPB as Amicus Curiae, Dkt. No. 14, p. 10, *Hernandez v. Williams, Zinman, & Parham, P.C.*, No. 14-15672 (9th Cir. Aug. 20, 2014), http://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-v.williams-zinman-parham-p.c./140821briefhernandez1.pdf.

2 *See* Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act—CFPB Annual Report 2016* at 16-17 (2016), https://www.consumerfinance.gov/data-research/research-reports/fair-debt-collection-practices-act-annual-report-2016/.

9. As noted by the CFPB and the Federal Trade Commission, "this validation requirement was 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.'" *Hernandez*, No. 14-15672, at 5 (quoting S. Rep. No. 95-382, at 4 (1977)).

10. This case centers on Defendant's failure to properly provide the disclosures required by 15 U.S.C. § 1692g in its initial written communications to Maryland consumers, or within five days thereafter.

PARTIES

11. James A. Smith ("Plaintiff"), whose address is 9411 Lyonswood Drive, Owings Mills, Maryland 21117, is a natural person who at all relevant times resided in Baltimore County, Maryland.

12. Plaintiff is obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due, a creditor other than Defendant.

13. Plaintiff's obligation, or alleged obligation, owed or due, or asserted to be owed or due, 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, a loan secured for personal, family, or household expenses (the "Debt").

14. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

15. Defendant is a limited liability corporation with its principal office in Towson, Maryland.

16. Defendant is an entity that 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).

17. Upon information and belief, at the time Defendant attempted to collect the Debt from Plaintiff, the Debt was in default, or Defendant treated the Debt as if it were in default from the time that Defendant acquired it for collection.

18. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or to regularly collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

19. Defendant is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

JURISDICTION AND VENUE

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

21. 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 and has its principal office in this district.

FACTUAL ALLEGATIONS

22. On or about November 15, 2016, Defendant sent a written communication to Plaintiff in connection with the collection of the Debt.

23. A true and correct copy of the November 15, 2016 communication to Plaintiff is attached as Exhibit A.

24. This November 15, 2016 communication to Plaintiff was the first communication Plaintiff received from Defendant.

25. Other than an additional letter of the same date concerning the Servicemembers Civil Relief Act, Plaintiff did not receive any other communications from Defendant within five days of the initial November 15, 2016 communication.

26. Relevant here, the initial November 15, 2016 communication to Plaintiff opened with the following:

> On November 18, 2005, you executed a Deed of Trust and Note secured by the above referenced property, and borrowed money in connection with a loan made by Mortgage Lenders Network USA, Inc.. [*sic*] The current owner of the note is U.S. Bank National Association, as Trustee, for Residential Asset Securities Corporation, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-EMX1, and the current servicer of the above-referenced loan is Wells Fargo Bank, N.A.. [*sic*] The loan has been referred to this office for legal action based upon a default under the terms of the loan agreement.

Ex. A.

27. Defendant's November 15, 2016 communication also stated:

> IF YOU ARE A DEBTOR, OR AN ATTORNEY REPRESENTING A DEBTOR, THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED HEREBY WILL BE USED FOR THAT PURPOSE.

Id.

28. Defendant's November 15, 2016 communication violated 15 U.S.C. § 1692g(a)(2) by failing to clearly specify, in a manner in which the least sophisticated consumer could understand, the name of the creditor to whom the Debt was owed.

29. To be sure, the opening paragraph of Defendant's November 15, 2016 communication refers to five separate entities purportedly connected in some way with the Debt:

- "Mortgage Lenders Network USA, Inc.";
- "U.S. Bank National Association";
- "Residential Asset Securities Corporation, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-EMX1";
- "Wells Fargo Bank, N.A."; and
- "this office" (i.e., Defendant).

30. But nowhere in its November 15, 2016 communication does Defendant specify which of the foregoing entities is "the creditor to whom the [D]ebt is owed." *See* 15 U.S.C. § 1692g(a)(2).

31. This is significant, because to satisfy its obligation under section 1692g(a)(2), Defendant's initial communication must "make th[e] identification clearly enough that the recipient would likely understand it." *Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317, 321 (7th Cir. 2016) (affirming liability under section 1692g(a)(2) for confusing debt collection letter).

32. Here, Defendant's November 15, 2016 written communication inundates the reader with a barrage of entities involved with the Debt without clearly specifying to which entity the Debt is owed. *See* Ex. A.

33. The potential to mislead is compounded by Defendant's statement at the close of the paragraph that Plaintiff's Debt "has been referred to this office for legal action . . . ." *Id*.; *accord Janetos*, 825 F.3d at 321-22 ("even where a consumer would recognize Asset Acceptance as having owned the debt at some time in the past (perhaps from pre-lawsuit collection efforts or the lawsuit itself), the form letter said that the 'account' had since been 'transferred' from Asset Acceptance to Fulton. Defendants do not explain how, in light of this language, an understanding of Asset Acceptance's former role would have shown its current role."); *id*. at 323 ("Here, the letters Fulton sent did not actually identify Asset Acceptance as the current creditor at all, and in fact leave the impression that Asset Acceptance may well have transferred ownership of the debts to Fulton.").

34. "On its face, then, the letter failed to disclose the information that § 1692g(a)(2) required." *Id*. at 321; *see also Long v. Fenton & McGarvey Law Firm P.S.C.*, 223 F. Supp. 3d 773, 779 (S.D. Ind. 2016) ("Based upon the text of the Letters, without more, a significant fraction of the population could question whether the current creditor is Jefferson Capital, Fenton & McGarvey, or

Comenity Bank without requiring a 'bizarre, peculiar, or idiosyncratic interpretation.'") (quoting *McMillan v. Collection Prof'ls Inc.*, 455 F.3d 754, 758 (7th Cir. 2006)); *Datiz v. Int'l Recovery Assocs., Inc.*, No. 15-3549, 2016 WL 4148330, at *12 (E.D.N.Y. Aug. 4, 2016) ("The Court is not convinced that the least sophisticated consumer would be able to deduce from the caption, 'Re: John T. Mather Hospital,' that John T. Mather Hospital is the current creditor to whom the Plaintiff's debt is owed for purposes of Section 1692g(a)(2), particularly given the fact that the Letter does not specify the Defendant's relationship to John T. Mather Hospital.").

35. Indeed, upon reviewing the November 15, 2016 letter, Plaintiff was confused as to which of the entities listed was the creditor owed the Debt.

36. Plaintiff thus wrote a letter to Defendant, dated December 7, 2016, seeking validation of the Debt.

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of:

> All persons (a) with a Maryland address, (b) to whom Cohn, Goldberg & Deutsch, LLC mailed an initial debt collection communication, (c) in connection with the collection of a consumer debt, (d) in the one year preceding the date of this complaint, (e) which included the following language: "you executed a Deed of Trust and Note secured by the above referenced property, and borrowed money in connection with a loan made by [_____]. The current owner of the note is [_____], and the current servicer of the above-referenced loan is [_____]. The loan has been referred to this office for legal action . . ."; (f) but not otherwise specify the name of the creditor to whom the debt was owed.

38. Excluded from the class is Defendant, its officers and directors, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendant has or had controlling interests.

39. The proposed class satisfies Rule 23(a)(1) because, upon information and belief, it is so numerous that joinder of all members is impracticable.

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

41. The proposed class is ascertainable in that, upon information and belief, the names and addresses of all members of the proposed class can be identified in business records maintained by Defendant.

42. The proposed class satisfies Rules 23(a)(2) and (3) because Plaintiff's claims are typical of the claims of the members of the class. To be sure, Plaintiff's claims and those of the members of the class originate from the same standardized debt collection letter utilized by Defendant, and Plaintiff possesses the same interests and has suffered the same injuries as each member of the proposed class.

43. Plaintiff satisfies Rule 23(a)(4) because he will fairly and adequately protect the interests of the members of the class and has retained counsel experienced and competent in class action litigation.

44. Plaintiff has no interests that are contrary to or in conflict with the members of the class that he seeks to represent.

45. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since, upon information and belief, joinder of all members is impracticable.

46. Furthermore, as the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the class to individually redress the wrongs done to them.

47. There will be no difficulty in the management of this action as a class action.

48. Issues of law and fact common to the members of the class predominate over any questions that may affect only individual members, in that Defendant has acted on grounds generally applicable to the class.

49. Among the issues of law and fact common to the class are:

a. Defendant's violations of the FDCPA as alleged herein;

b. Defendant's failure to properly provide in its initial debt collection letters the disclosures required by 15 U.S.C. § 1692g;

c. the existence of Defendant's identical conduct particular to the matters at issue;

d. the availability of statutory penalties; and

e. the availability of attorneys' fees and costs.

COUNT I: VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692g(a)(2)

50. Plaintiff repeats and re-alleges the factual allegations contained in paragraphs 1 through 49 above.

51. The FDCPA at 15 U.S.C. § 1692g provides:

> (a) 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 –
>
> * * * *
>
> (2) the name of the creditor to whom the debt is owed;
>
> * * * *

52. Defendant's November 15, 2016 communication was its initial communication to Plaintiff.

53. The November 15, 2016 communication was sent in connection with an attempt to collect the Debt from Plaintiff.

54. At the time Defendant acquired the Debt for collection, it was, upon information and belief, considered to be in default.

55. The November 15, 2016 communication did not contain the proper disclosures required by 15 U.S.C. § 1692g(a)(2), nor did Defendant provide such disclosures within five days thereafter.

56. Specifically, the November 15, 2016 communication violated 15 U.S.C. § 1692g(a)(2) by failing to specify to Plaintiff the name of the creditor to whom his Debt was owed.

57. That is, given the confusing array of companies, banks, and other entities purportedly connected to the Debt and listed in Defendant's November 15, 2016 communication, the least sophisticated consumer would be left to guess which entity was owed the Debt upon review and consideration of all of the entities listed with their corresponding functions.

58. Indeed, after reading the November 15, 2016 communication, Plaintiff was unsure of which entity was the creditor owed the Debt.

59. As a result, Defendant violated 15 U.S.C. § 1692g(a)(2).

60. The harm suffered by Plaintiff is particularized in that the violative initial debt collection letter at issue was sent to him personally, regarded his personal alleged debt, and failed to give him statutorily-mandated disclosures to which he was entitled.

61. Likewise, Defendant's actions created a concrete harm in that they constituted a debt collection practice that Congress prohibited because such practice is likely to mislead consumers,

causing them to misunderstand their rights and to not vindicate the protections afforded them by federal law. In addition, Defendant's actions invaded a specific private right created by Congress, and the invasion of said right creates the risk of real harm.

WHEREFORE, Plaintiff respectfully requests relief and judgment as follows:

A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

B. Adjudging and declaring that Defendant violated 15 U.S.C. § 1692g(a)(2);

C. Awarding Plaintiff and members of the class statutory damages pursuant to 15 U.S.C. § 1692k;

D. Awarding members of the class actual damages incurred, as applicable, pursuant to 15 U.S.C. § 1692k;

E. Enjoining Defendant from future violations of 15 U.S.C. § 1692g(a)(2) with respect to Plaintiff and the class;

F. Awarding Plaintiff and members of the class their reasonable costs and attorneys' fees incurred in this action, including expert fees, pursuant to 15 U.S.C. § 1692k and Rule 23 of the Federal Rules of Civil Procedure;

G. Awarding Plaintiff and the members of the class any pre-judgment and post-judgment interest as may be allowed under the law; and

H. Awarding other and further relief as the Court may deem just and proper.

Dated: August 10, 2017

Respectfully submitted,

/s/ Eric N. Stravitz
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Counsel for Plaintiff and the proposed class

* to seek admission *pro hac vice*

JURY DEMAND

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

/s/ Eric N. Stravitz
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