

significant concern today. In fact, the CFPB receives more consumer complaints about debt collection practices than about any other issue.”¹

4. Further, over one-third of the debt collection complaints received by the CFPB involve 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 with respect to those debts. 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 properly advise the consumer of “the amount of the debt.” *Id.*, § 1692g(a)(1).

8. 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)).

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 2018* at 15 (2018), <https://www.consumerfinance.gov/data-research/research-reports/fair-debt-collection-practices-act-annual-report-2018/>.

9. 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

10. Marcia R. Hoffman ("Plaintiff"), whose address is 602 Gahle Court, Westminster, Maryland 21157, is a natural person who at all relevant times resided in Carroll County, Maryland.

11. 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.

12. 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 household expenses (the "Debt").

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

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

15. 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).

16. 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.

17. 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.

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

Jurisdiction and Venue

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

20. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), as the acts and transactions giving rise to Plaintiff’s action occurred in this district, and as Defendant transacts business and has its principal office in this district.

Factual Allegations

21. On or about November 5, 2018, Defendant sent a written communication to Plaintiff in connection with the collection of the Debt.

22. A true and correct copy of the November 5, 2018 communication to Plaintiff is attached as Exhibit A.

23. This November 5, 2018 communication to Plaintiff was the first communication Plaintiff received from Defendant.

24. Plaintiff did not receive any other communications from Defendant within five days of the initial November 5, 2018 communication.

25. Relevant here, the November 5 letter to Plaintiff opened with the following:

Be advised that this office has been retained by LENDMARK FINANCIAL SERVICES, LLC. fka LENDMARK FINANCIAL SERVICES, INC. to collect your delinquent account under the terms of your Note dated 05/17/2017. The principal balance on your account is \$4349.00, plus accrued interest if provided in

your contract, plus attorney fees if provided in your contract, plus late fees if provided in your contract.

Ex. A.

26. On the reverse side, Defendant's November 5 communication stated: "THIS COMMUNICATION IS FROM A DEBT COLLECTOR, AND IS AN EFFORT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE." *Id.*

27. Defendant's November 5 communication violated the FDCPA at 15 U.S.C. § 1692g(a)(1) by failing to clearly specify the amount of the debt Plaintiff allegedly owed.

28. To be sure, while Defendant's letter stated a "principal balance" of \$4,349.00, it went on to demand payment of "accrued interest," "attorney fees," and "late fees" "if provided in [Plaintiff's] contract." Ex. A.

29. That is, Defendant intended to collect whatever "accrued interest," "attorney fees," or "late fees" Plaintiff's loan agreement would allow—but without specifying precisely which amounts of such interest and fees actually were owed.

30. A recipient of Defendant's collection letter would not know how much she was alleged to owe.

31. Indeed, Plaintiff does not know how much Defendant alleges she owes.

32. Defendant's November 5 communication thus failed to adequately state the amount of the debt Defendant sought to collect.

Class Action Allegations

33. 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 the Law Office of Fradkin & Weber, P.A. mailed an initial debt collection communication not returned as undeliverable, (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: “The principal balance on your account is \$[_____], plus accrued interest if provided in your contract, plus attorney fees if provided in your contract, plus late fees if provided in your contract.”

34. 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.

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

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

37. The proposed class is ascertainable because it is defined by reference to objective criteria.

38. In addition, upon information and belief, the names and addresses of all members of the proposed class can be identified in business records maintained by Defendant.

39. 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 initial 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.

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

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

42. 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.

43. 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.

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

45. 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.

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

- a. Defendant's violations of the FDCPA as alleged herein;
- b. whether Defendant is a debt collector as defined by the FDCPA;
- c. Defendant's failure to properly provide in its initial debt collection letters the disclosures required by 15 U.S.C. § 1692g;
- d. whether Defendant's statement that "[t]he principal balance on your account is \$[_____], plus accrued interest if provided in your contract, plus attorney fees if provided in your contract, plus late fees if provided in your contract," violates 15 U.S.C. § 1692g(a)(1);
- e. the availability of statutory penalties; and
- f. the availability of attorneys' fees and costs.

Count I: Violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692g(a)(1)

47. Plaintiff repeats and re-alleges the factual allegations contained in paragraphs 1 through 46 above.

48. 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 –

(1) the amount of the debt;

* * * *

49. Defendant's November 5, 2018 communication was its initial communication to Plaintiff.

50. The November 5 communication was sent in connection with an attempt to collect the Debt from Plaintiff.

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

52. The November 5 communication did not contain the proper disclosures required by 15 U.S.C. § 1692g(a)(1), nor did Defendant provide such disclosures within five days thereafter.

53. Specifically, the November 5 communication violated 15 U.S.C. § 1692g(a)(1) by failing to adequately specify the amount of the Debt Plaintiff supposedly owed.

54. While Defendant's letter stated a "principal balance" of \$4,349.00, it went on to demand payment of "accrued interest," "attorney fees," and "late fees" "if [so] provided in [Plaintiff's] contract." Ex. A.

55. That is, Defendant intended to collect whatever “accrued interest,” “attorney fees,” or “late fees” Plaintiff’s loan agreement would allow—but without specifying whether such interest and fees were, in fact, owed, and if so, precisely which amounts of each were owed.

56. Important, then, is that “[t]he unpaid principal balance is not the debt; it is only part of the debt; the Act requires a statement of the debt.” *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872, 875-76 (7th Cir. 2000).

57. Accordingly, the “total amount due” on the debt includes any “interest and other charges as well as principal,” as of the date of the letter. *Id.* at 876.

58. District courts throughout the country correspondingly have held that to properly state “the amount of the debt,” a debt collector must disclose: (1) “whether interest is in fact accruing, and, if interest is accruing, the amount of interest due on the date the [] letter was sent,” *Dupuy v. Weltman, Weinberg, & Reis Co.*, 442 F. Supp. 2d 822, 827 (N.D. Cal. 2006); (2) “the effective date as of which [an] amount would suffice to pay off the debt in full,” *Dragon v. I.C. Sys., Inc.*, 483 F. Supp. 2d 198, 202 (D. Conn. 2007); (3) “the date as of which the unpaid accrued interest was calculated,” *Smith v. Lyons, Doughty & Veldhuis, P.C.*, No. 07-5139, 2008 WL 2885887, at *6 (D.N.J. July 23, 2008); and (4) the “applicable interest rate.” *Jones v. Midland Funding, LLC*, 755 F. Supp. 2d 393, 397 (D. Conn. 2010), *adhered to on reconsideration*, No. 08-802, 2012 WL 1204716 (D. Conn. Apr. 11, 2012).

59. More recently, the Eastern District of Virginia sustained a section 1692g(a)(1) claim for potential confusion in a collection letter that listed an “Unpaid Principal Balance” alongside specific amounts of interest, fees, and expenses allegedly owed on the delinquent account—but which amounts, when added together, failed to match the “total debt” stated

elsewhere in the letter. *Kelley v. Nationstar Mortg., LLC*, No. 13-311, 2013 WL 5874704, at *5-6 (E.D. Va. Oct. 31, 2013).

60. But here, Defendant's November 5 communication fails to provide *any* amounts for the "accrued interest," "attorney fees," or "late fees" that it intended to collect from Plaintiff, *see* Ex. A—creating more confusion than that recognized in *Kelley*.

61. As a result, Defendant violated 15 U.S.C. § 1692g(a)(1).

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

63. "Section 1692g furthers th[e] purpose [of protecting debtors from abusive debt collection activity] by requiring a debt collector who solicits payment from a consumer to provide that consumer with a detailed validation notice, which allows a consumer to confirm that he owes the debt sought by the collector before paying it." *Papetti v. Does 1-25*, 691 F. App'x 24, 26 (2d Cir. 2017).

64. And the content of Defendant's November 5, 2018 communication created a material risk of harm to the concrete interest Congress was trying to protect in enacting the FDCPA. *See, e.g., Ziogiannis v. Seterus, Inc.*, No. 17-140, 2017 WL 4005008, at *2 (2d Cir. Sep. 12, 2017) (concluding "that the specific procedural violation alleged in the amended complaint presents a material risk of harm to the underlying concrete interest Congress sought to protect with the FDCPA").

65. Specifically, when a consumer is given only partial information and not told the *total* amount of her alleged Debt, she will not know what amount is truly owed, or what must be paid to bring her account current to avoid further collection efforts.

66. 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. *See Church v. Accretive Health, Inc.*, 654 F. App'x 990, 995 (11th Cir. 2016).

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)(1);
- 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)(1) 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: January 16, 2019

Respectfully submitted,

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* 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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