

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

4. More specifically, even today 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. So, to combat this serious problem in the debt collection industry, the FDCPA requires debt collectors to send consumers “validation notices” containing certain prescribed information about their alleged debts and their 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. The CFPB and the Federal Trade Commission have noted that “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)).

8. As part of the validation notice requirements, the FDCPA also requires a 30-day validation period for the consumer to dispute his alleged debt, seek verification of the debt, or

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/>.

seek creditor information regarding the debt, which begins to run upon receipt of the required validation notice. 15 U.S.C. § 1692g(a).

9. Significant here, “[a]ny collection activities and communication during th[is] 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).

10. The focus of this action is two-fold: (1) Defendant’s overshadowing of necessary validation disclosures in its initial communications to Maryland consumers by demanding payment on their debts within the same 30 days reserved for the consumers’ validation rights, and (2) Defendant’s related use of deceptive and misleading threats to institute litigation against consumers if they do not make payments before the expiration of their 30-day validation periods.

Parties

11. Jeffery D. Stadtler (“Plaintiff”), whose address is 29823 Scott Circle, Mechanicsville, Maryland 20659, is a natural person who at all relevant times resided in St. Mary’s 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 personal line of credit to be used for personal and 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 Lexington Park, Maryland.

16. Defendant is a law firm that includes a “collection department [that] can provide a broad range of services, such as tracking down debtors, preparing demand letters, filing of District and Circuit Court actions, and judgment enforcement through garnishment, levies, foreclosures and asset attachment.”³

17. 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).

18. 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.

19. 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.

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

Jurisdiction and Venue

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

22. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events 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

³ See <http://www.paxlawyers.com/practice-areas/business-law> (last visited August 28, 2019).

23. On or about June 7, 2019, Defendant sent a written communication to Plaintiff in connection with the collection of the Debt.

24. A true and correct copy of the June 7, 2019 communication to Plaintiff is attached as Exhibit A.

25. The June 7, 2019 communication to Plaintiff was the first communication Plaintiff received from Defendant.

26. Plaintiff did not receive any other communications from Defendant within five days of the initial June 7, 2019 communication.

27. The June 7 letter opened with the following:

This office represents Cedar Point Federal Credit Union (“Cedar Point”) with regards to your delinquent Loan account. Please be advised that this letter constitutes a **DEMAND** for immediate payment of all sums now outstanding in the amount of **\$595.80 for your loan account**.

Ex. A.

28. Defendant’s June 7 letter later threatened:

In the event that the delinquent balance is not paid within five (5) business days of this letter, it is Cedar Point’s policy to declare the entire loan balance due and file suit against you in the District Court for St. Mary’s County, Maryland. Such a suit will include a claim for **\$6,953.52 for your loan account, together with attorney fees and may include additional charges for court costs, and interest**.

Id.

29. On the reverse side, Defendant’s June 7 communication provided a “REQUIRED NOTICE UNDER THE FAIR DEBT COLLECTION PRACTICES ACT.” *Id.*

30. Among Defendant’s disclosures in that notice:

[U]nless a consumer, within thirty (30) days after receipt of this notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by this office . . . if the consumer notifies this office in writing within the thirty (30) day period that the debt, or any portion thereof, is disputed, this office will obtain verification and a copy of such verification will be mailed to the

consumer by this office . . . [and upon] the consumer's written request within the thirty (30) day period, this office will provide the consumer with the name and address of the original creditor if different from the current creditor.

Id.

31. Under that notice, the letter stated:

Please be advised that if you dispute this debt, this does not prevent Cedar Point from going forward and filing suit against you immediately. Therefore, if payment is not received within five (5) business days of receipt of this letter, a suit may be filed in the District Court of Maryland for St. Mary's County. Be further advised that this demand for payment does not override your rights to seek validation of the debt as set forth above.

Id.

32. After the signature of Anjelica N. Harden, the letter closed with the following disclosure: **“THIS IS AN ATTEMPT TO COLLECT A DEBT ANY AND ALL INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.”** *Id.*

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 Dugan, McKissick & Longmore, LLC 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: (1) “[i]n the event that the delinquent balance is not paid within five (5) business days of this letter, it is Cedar Point's policy to declare the entire loan balance due and file suit against you in the District Court for St. Mary's County, Maryland”; or (2) “if payment is not received within five (5) business days of receipt of this letter, a suit may be filed in the District Court of Maryland for St. Mary's County.”

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.

40. 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.

41. 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.

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

43. 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.

44. 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.

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

46. 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.

47. 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 requisite disclosures in its initial written communications to consumers;
- d. Defendant's use of misleading and deceptive threats of litigation absent payment within five business days of receipt of its initial written communications to consumers;
- 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(b)

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

49. The FDCPA at 15 U.S.C. § 1692g(b) provides:

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof,

until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. *Any 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.*

(emphasis added).

50. The manner in which Defendant conveyed the validation notice required by 15 U.S.C. § 1692g(a) in its June 7 communication was ineffective, as Defendant's demands for payment within five business days of the date of the letter contradicted and overshadowed the mandatory validation notice.

51. The front of the June 7 letter stated in pertinent part:

In the event that the delinquent balance is not paid within five (5) business days of this letter, it is Cedar Point's policy to declare the entire loan balance due and file suit against you in the District Court for St. Mary's County, Maryland. Such a suit will include a claim for **\$6,953.52 for your loan account, together with attorney fees and may include additional charges for court costs, and interest.**

Ex. A.

52. The back of the letter, under the validation notice, again threatened Plaintiff that "if payment is not received within five (5) business days of receipt of this letter, a suit may be filed in the District Court of Maryland for St. Mary's County." *Id.*⁴

⁴ Notably, on the first page of its letter, Defendant stated that Plaintiff's account must be "paid within five (5) business days of this letter," though on the reverse side Defendant stated that payment must be "received within five (5) business days of *receipt of this letter . . .*" Ex. A (emphasis added). Defendant's letter is thus internally contradictory and also contradicts the FDCPA at section 1692g(b).

53. These statements not only demanded payment within five business days—which is *well before* the close of the prescribed validation period under section 1692g(a)—but also conveyed to Plaintiff that the only way to avoid a lawsuit being filed against him was to pay \$595.80 within just five business days.

54. Of course, pursuant to section 1692g(a), Plaintiff was entitled to dispute all or a portion of the Debt, and to seek creditor information, during the 30-day validation period that begins to run upon his *receipt* of the June 7 letter—which was necessarily sometime *after* June 7, given typical postage and handling times.

55. And given those typical postage and handling times, Plaintiff and absent class members could theoretically have only one or two days to consider their options with respect to their alleged debts before the expiration of the payment deadline demanded by Defendant.

56. Thusly, by Defendant threatening potential legal action absent payment within five business days, it encouraged Plaintiff to *not* take advantage of his validation rights and thereby forego important protections afforded by the FDCPA—all to Defendant’s benefit and Plaintiff’s detriment.

57. Pertinent here, the Seventh Circuit recognized in *Chauncey v. JDR Recovery Corp.*:

Defendant argues that the letter contains no contradiction because plaintiff is given the same amount of time to pay as to contest the debt (i.e., “within thirty (30) days”). But the letter required that plaintiff’s payment be received within the 30-day period, thus requiring plaintiff to mail the payment prior to the thirtieth day to comply. In contrast, subparagraphs (3) and (4) of § 1692g(a) give the consumer thirty days after receipt of the notice to dispute the validity of a debt.

118 F.3d 516, 519 (7th Cir. 1997); *see also Swift v. Maximus, Inc.*, No. 04-216, 2004 WL 1576618, at *3-4 (E.D.N.Y. July 15, 2004) (“[T]he notice states that payment must be received

within the thirty day limit. Even the least-sophisticated consumer would calculate that payment must be mailed in advance of a deadline in order to be received by that deadline.”).

58. Worse, here, unlike in *Chauncey* and *Swift*, Defendant provided Plaintiff significantly *less* time to make payment (“within five (5) business days”) than to exercise his validation rights (“within thirty (30) days after receipt of this notice”)—rendering Defendant’s violation all the more obvious. *See* Ex. A.

59. Moreover, Defendant sent the letter on law firm letterhead, conveying a sense of authority to the least sophisticated consumer. *See, e.g., McCray v. Deitsch & Wright P.C.*, 356 F. Supp. 3d 1358, 1365 (M.D. Fla. 2019) (“‘A debt collection letter on an attorney’s letterhead conveys authority,’ and ‘[a]n unsophisticated consumer, getting a letter from an attorney, knows the price of poker has just gone up.’”) (quoting *Avila v. Rubin*, 84 F.3d 222, 229 (7th Cir. 1996)).

60. In sum, the effect of Defendant’s demand for payment within five business days was to cause a consumer like Plaintiff to waive, or believe he did not have, the validation rights specifically afforded him under 15 U.S.C. § 1692g.

61. While Defendant’s June 7 letter stated on the reverse side that its “demand for payment does not override your rights to seek validation of the debt as set forth above,” Ex. A, the location and content of such language did not effectively inform the least sophisticated consumer that, although Defendant demanded payment of \$595.80 be made well before the expiration of the validation period with the threat of a lawsuit if Plaintiff did not do so, Plaintiff still had the right to invoke his validation rights throughout the entirety of the 30-day validation period, at which point Defendant would need to suspend collection efforts (through litigation or otherwise) until it provided him with validation of the Debt.

62. Defendant's June 7 communication correspondingly contradicted, overshadowed, and rendered ineffective the validation notice mandated by the FDCPA, in violation of 15 U.S.C. § 1692g(b).

63. 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 properly give him statutorily mandated disclosures to which he was entitled.

64. Section 1692g furthers the 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.

65. And the content of Defendant's June 7, 2019 communication created a risk of real harm to the concrete interest Congress was trying to protect in enacting the FDCPA.

66. Specifically, when a consumer is informed, on one hand, that if he does not pay money within five business days, his debt will go further into delinquency and result in litigation, but also, on the other hand, that he can dispute the debt or request creditor information within 30 days, he is left unsure as to the time period in which he must comply.

67. Further, Defendant's conduct is likely to lead the least sophisticated consumer to not invoke his validation rights because he would believe it to be futile to do so since a lawsuit was imminent if he did not pay the Debt immediately.

68. And here, this very risk materialized, in that Plaintiff was focused on the five-day payment deadline and therefore confused about whether he had 30 days to invoke his validation rights in light of the other language in Defendant's letter requiring a payment of \$595.80 within

five days to prevent the debt from going further into delinquency and risking the filing of a lawsuit against Plaintiff.

69. In addition, Defendant's actions invaded a specific private right created by Congress, and the invasion of that right creates the risk of real harm.

Count II: Violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692e

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

71. The FDCPA at 15 U.S.C. § 1692e provides, in pertinent part, that “[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

72. As explained above, Defendant's June 7, 2019 letter demanded payment from Plaintiff within five business days, and further threatened legal action against him absent such payment, while also advising him that he had 30 days from receipt of the letter to enforce his validation rights. *See* Ex. A.

73. By so demanding payment—and threatening litigation—inside of 30 days from the date of its letter, Defendant intended to scare Plaintiff into disregarding his validation rights under section 1692g(a) for fear of facing a lawsuit if he did not make payment—something section 1692g(b) expressly prohibits.

74. Defendant thusly utilized deceptive and misleading means in attempting to collect Plaintiff's alleged Debt, in violation of 15 U.S.C. § 1692e, by encouraging him to forego his validation rights for fear of facing a lawsuit.

75. The harm suffered by Plaintiff is particularized in that the violative communication at issue was sent to him personally and concerned his alleged Debt.

76. Section 1692g furthers the 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.

77. And the content of Defendant's June 7, 2019 communication created a risk of real harm to the concrete interest Congress was trying to protect in enacting the FDCPA.

78. Specifically, when a consumer is informed, on one hand, that if he does not pay money within five business days, his debt will go further into delinquency and result in litigation, but also, on the other hand, that he can dispute the debt or request creditor information within 30 days, he is left unsure as to the time period in which he must comply.

79. Further, Defendant's conduct is likely to lead the least sophisticated consumer to not invoke his validation rights because he would believe it to be futile to do so since a lawsuit was imminent if he did not pay the Debt immediately.

80. And here, this very risk materialized, in that Plaintiff was focused on the five-day payment deadline and therefore confused about whether he had 30 days to invoke his validation rights in light of the other language in Defendant's letter requiring a payment of \$595.80 within five days to prevent the debt from going further into delinquency and risking the filing of a lawsuit against Plaintiff.

81. Moreover, Defendant violated Plaintiff's right to not be the target of misleading debt collection conduct.

82. In addition, Defendant's actions invaded a specific private right created by Congress, and the invasion of that 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(b) and 1692e;
- 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(b) and 1692e 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: September 10, 2019

Respectfully submitted,

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JURY DEMAND

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

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