

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

DAVID BLAKE,)	
)	
)	
Plaintiff,)	
)	
)	C.A. No. 08-12033-MBB
v.)	
)	
RIDDLE & WOOD, P.C.)	
f/k/a Riddle & Associates, P. C.)	
)	
Defendant)	

Second Amended Class Action Complaint

Introduction

1. Federal and Massachusetts’ law contain a complementary array of safeguards to protect consumers from unfair and deceptive debt collection methods. Among these are the requirements that the debt collector limit itself to no more than two debt collection contacts within a seven-day period and that the collector be licensed to collect debts from Massachusetts consumers.

2. Defendant Riddle & Wood, P.C. (“Riddle”) ignores these and other debt collection laws, systematically flouting these consumer protections.

3. This action seeks class-wide relief for Riddle's unfair and deceptive debt collection practices. Riddle's practices violate specific FDCPA provisions as well as Massachusetts' debt collection laws. Mr. Blake and the putative class seek monetary, injunctive and declaratory relief to remedy the challenged practices.

Parties

4. Plaintiff, David Blake ("Mr. Blake") is an individual who resides at 200 Left Washington Street, Gloucester, Massachusetts 01930.

5. Defendant, Riddle & Wood, P. C., is a Utah based law firm practicing principally in the area of consumer debt collections. Riddle & Wood, P. C., is the successor to Riddle & Associates, P. C., which at all material times engaged in the conduct complained of herein. On or about October 29, 2008, the firm changed its name from Riddle & Associates, P. C. to Riddle & Wood, P. C., and named David G. Wood as president. Riddle's principal place of business is located at 11778 South Election Drive, Suite 240, Draper, Utah, 84020.

Jurisdiction And Venue

6. This Court has original jurisdiction over this action and Riddle pursuant to 28 U.S.C §§ 1331 and 1367. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to Mr. Blake's claims occurred here.

Facts

7. Riddle & Wood, P.C. represents debt buyers and creditors around the country. The firm's focus is nationwide pre-lawsuit or post-judgment higher-volume recovery of credit card, telecommunications, automobile and medical debt.

8. Riddle is a debt collector as defined by the FDCPA and relevant state law.

9. Riddle collects or attempts to collect debts from consumers in Massachusetts, but as of the date of filing of this complaint, Riddle has failed to obtain a license from the Commissioner of Banks to collect debts in Massachusetts, and has also failed to obtain the bond, although both are required by M.G.L. c. 93, § 24A.

10. In a letter dated October 2, 2006, the Commissioner of Banks notified Riddle that, as it was not licensed to do business as a debt collector in Massachusetts, it was to cease engaging in collection operations in Massachusetts until it either obtained a license or demonstrated in writing to the Commissioner that it was not subject to the operative debt collection laws. A true and correct copy of the Banking Commissioner's October 2, 2006 Cease and Desist letter is attached as *Exhibit A*.

11. In a letter dated January 15, 2008, the Commissioner of Banks again notified Riddle that, as it was neither licensed nor bonded to do business as a

debt collector in Massachusetts, it was to "cease engaging in your collection operations with Massachusetts residents until such time as you have been issued a license by the Commissioner of Banks for the operation of a debt collector in Massachusetts." A true and correct copy of the Banking Commissioner's Cease and Desist letter is attached as *Exhibit B*.

12. In 2007 Riddle began calling Mr. Blake, attempting to collect a debt he allegedly owed to Ford Motor Company.

13. Many calls from Riddle were delivered through an automatic dialer or other computerized device, which delivered a pre-recorded message.

14. In February 2008 Mr. Blake began logging calls he received from Riddle.

15. Between February 8, 2008 and April 17, 2008, Riddle communicated with Mr. Blake by telephone with illegal frequency, often calling his home three to four times each week, sometimes leaving answering machine communications.

16. The chart below identifies the frequency of communication from Riddle to Mr. Blake, when Mr. Blake began documenting the calls:

Call Period	Dates of Calls	Total Number of Calls
2/8/08 through 2/14/08	2/8, 2/9, 2/11, 2/13	4
2/15/08 through 2/21/08	2/15, 2/19, 2/21	3

2/25/08 through 3/2/08	2/25, 2/27, 2/29, 3/2	4
3/4/08 through 3/10/08	3/4, 3/8, 3/10	3
3/11/08 through 3/17/08	3/11, 3/15, 3/16	3
3/18/08 through 3/24/08	3/18, 3/19, 3/20, 3/24	4
3/25/08 through 3/31/08	3/25, 3/28, 3/30	3
4/1/08 through 4/7/08	4/1, 4/3, 4/5, 4/7	4
4/11/08 through 4/17/08	4/11, 4/13, 4/14, 4/17	4

17. In response to a public records request, the Attorney General provided Mr. Blake with thirty-three complaints from Massachusetts' consumers alleging unfair and deceptive conduct by Riddle. Almost forty percent of these complaints allege that Riddle routinely made collection calls more than two times in a seven day period.

18. On December 9, 2008, Mr. Blake made a demand upon Riddle pursuant to M.G.L. c. 93A, § 9, on behalf of himself and all similarly situated individuals. A true and correct copy of Mr. Blake's c. 93A demand letter is attached as *Exhibit C*.

19. Riddle responded to the c. 93A settlement demand, making a settlement offer that Mr. Blake deemed unreasonable.

Applicable Law

The Fair Debt Collection Practices Act

20. The Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"), was enacted, among other things "to eliminate abusive debt collection practices by debt collectors ... and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e).

21. To those ends, and relevant to this action, 15 U.S.C. § 1692d provides, in relevant part:

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(5) Causing a telephone to ring or engaging any person in telephone conversation *repeatedly or continuously* with intent to annoy, abuse, or harass any person at the called number (emphasis added).

22. 15 U.S.C. § 1692e provides, in pertinent part, that it is a violation of the FDCPA to:

(5) threaten to take any action that cannot legally be taken or that is not intended to be taken; or

(10) use any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

23. 15 U.S.C. § 1692f provides, in pertinent part:

A debt collector may not use unfair or unconscionable means to collect any debt... .

Complementary Massachusetts Law

24. The FDCPA contemplates and expressly allows for complementary state laws to enhance consumer protections against abusive debt collectors:

It is the purpose of this chapter ..., to promote consistent state action to protect consumers against debt collection abuses. 15 USC § 1692(e).

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, *a state law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.* 15 USC §1692n (emphasis added).

25. The Legislature and state regulators have promulgated such complementary debt collection laws. Massachusetts' law requires debt collectors to obtain a license from the Banking Commissioner, and obtain a bond, in order to lawfully collect consumer debts in the Commonwealth. M.G.L. c. 93, § 24A.

26. The Banking Commissioner has opined that the "attorney-at-law" exclusion under the Massachusetts Debt Collection Law, which excludes from the "debt collector" definition "attorneys-at-law collecting a debt on behalf of a client", "applies solely to attorneys licensed to practice law in the Commonwealth since, unlike attorneys licensed in other jurisdictions, they are in fact authorized to practice law and utilize the court system in the Commonwealth." ["Attorneys not licensed to practice law in the Commonwealth who regularly engage in or whose principal purpose is debt

collection, must obtain a license as a debt collector and will be subject to all provisions of the Debt Collection Law in the Commonwealth.”]. Selected Opinion 06-059, *Attorney-at-law Exclusion and Applicability of the Debt Collection Law to Attorneys*, Office of Consumer Affairs & Business Regulation, dated October 13, 2006, effective as of October 2, 2006. A true and correct copy of the Banking Commissioner’s Selected Opinion 06-059, is attached as *Exhibit D*.

27. M.G.L. c. 93 § 49 prohibits the collection or attempted collection of a debt in an unfair, deceptive or unreasonable manner.

28. The Banking Commissioner’s debt collection regulations, among other things, limit collectors to no more than two telephone communications to the consumer’s home in each seven-day period. 209 CMR 18.14(1)(d).

29. The Banking Commissioner calculates the seven day period under 209 CMR 18.14(1)(d) as commencing with the debt collector's first telephone communication with the consumer.

30. The Massachusetts Attorney General also has promulgated complementary debt collection regulations under c. 93A. Those regulations mirror the Banking Commissioner’s multiple telephone communication regulations in all material respects. 940 CMR 7.04(1)(f).

31. Failure to comply with the Banking Commissioner’s regulations, the Attorney General’s regulations, the provisions of M.G.L. c. 93, § 49, or the

license and bonding requirements of M.G.L. c. 93, §§ 24-28, constitute *per se* violations of M.G.L. c. 93A, § 2.

Class Allegations

32. Since at least 2003, Riddle has collected or attempted to collect debts from Massachusetts' consumers without being licensed or bonded, in violation of M.G.L. c. 93 §§ 24-28.

33. Riddle has demonstrated a pattern and practice of calling Massachusetts consumers more frequently than the two calls per seven day maximum set by the Banking Commissioner and Attorney General's regulations.

34. Riddle has derived and continues to derive substantial revenue from flouting debt collection laws intended to protect Massachusetts consumers from the unfair, deceptive and abusive conduct described in this complaint.

35. Massachusetts consumers have been injured and will continue to be injured by Riddle's conduct, and its resultant unwarranted invasion of their protected privacy rights and interests, until this situation is remedied.

Class Definition

36. Mr. Blake brings this action on behalf of a class of all other persons similarly situated, pursuant to Fed. R. Civ. P. 23.

37. The class consists of Massachusetts residents with whom Riddle has communicated in the four year period prior to the filing of this complaint in an attempt to collect a debt incurred for personal, family, or household purposes, and:

- a. Riddle's communications occurred when Riddle was not licensed pursuant to c. 93, § 24A, or;
- b. Riddle called the person at home and communicated with that person more than two times in a seven day period.

Class Issues

38. There are questions of law and fact common to the class, which common issues predominate over any issues peculiar to individual class members. The principal common questions include:

- a. whether Riddle's attempts to collect debts in Massachusetts while unlicensed violate FDCPA sections 1692e(5), 1692e(10), or 1692f;
- b. whether Riddle's placing of multiple calls within a week-long period, exceeding the state regulations' maximum allowable frequency, violate FDCPA sections 1692d(5) or 1692f;
- c. whether Riddle's conduct violates Massachusetts' statutes and regulations governing debt collection;
- d. whether Riddle's debt collection practices are unfair and deceptive within the meaning of M.G.L. c. 93A;
- e. whether Riddle's conduct was willful and knowing within the meaning of M.G.L. c. 93A § 9;

- f. the appropriate amount of damages and other relief to be granted to Mr. Blake and class members.

39. The only individual questions concern the identification of class members and the computation of relief to be afforded each class member and can be determined by a ministerial examination of the relevant files. Notice can be provided to the class by various means of communication.

40. Plaintiff's claims are typical of the claims of class members. All are based on the same legal and remedial theories.

41. Plaintiff will fairly and adequately protect the interests of all class members in the prosecution of this action and in the administration of all matters relating to claims stated herein. He is similarly situated with, and has suffered similar injuries as, the members of the class he seeks to represent. Plaintiff has retained counsel experienced in handling class action suits involving unfair business practices and consumer law. Neither the named Plaintiff nor his counsel have any interest that might cause them not to vigorously pursue this action.

42. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, in that:

- a. the losses suffered by the class members are such that prosecution of individual actions is impractical or economically unfeasible;
- b. by contrast, the illegal profits obtained by Riddle as a result of its unlawful practices are substantial;

- c. the form of proof required is such that prosecution of individual actions is impractical or economically infeasible;
- d. in the absence of the class action device, plaintiff and class members would be left without a remedy for the wrongful acts alleged, and Riddle would be unjustly enriched;
- e. the prosecution of separate lawsuits by individual members of the class would create the risk of inconsistent adjudications with respect to individual class members, which would establish incompatible standards of conduct for Riddle, making concentration of the litigation concerning this matter in this Court desirable;
- f. the claims of the representative Plaintiff are typical of the claims of the class; and
- g. no unusual difficulties are likely to be encountered in the management of this action as a class action.

43. The class is so numerous as to make it impracticable to join all members of the class as plaintiffs. Based upon the investigation of counsel, more than one hundred persons are in the class.

Count One: Violations Of The FDCPA

44. Riddle's conduct as described in this Complaint violates at least four provisions of the FDCPA:

- a. Riddle's multiple calls to Mr. Blake and class members in violation of Massachusetts law was conduct, the natural consequence of which was to harass, oppress, or abuse, in violation of 15 U.S.C. § 1692d(5);
- b. Riddle's unlicensed, unbonded collection activities in Massachusetts were unlawful, in violation of 15 U.S.C. §§ 1692e(5) and 1692f;

- c. Riddle's attempts to collect debts in Massachusetts while unlicensed and unbonded violates 15 U.S.C. §§ 1692e(10) and 1692f; and
- d. Riddle specifically defied the January 15, 2008 directive from the Banking Commissioner to cease engaging in unlicensed collection operations in Massachusetts, in violation of M.G.L. c. 93 §§ 24-28. This conduct is unfair or unconscionable, in violation of 15 U.S.C. § 1692f.

Count Two: Violation Of M.G.L. c. 214 § 1B

45. Riddle's illegal collection methods unreasonably and substantially interfered with the privacy of Mr. Blake and class members, in violation of M.G.L. c. 214 § 1B.

Count Three: Declaratory Judgment

46. Riddle's abusive debt collection practices have caused Mr. Blake and class members harm.

47. There is an existing controversy between Mr. Blake and the class on the one hand, relating to their rights as a consumer-debtors, and the propriety of Riddle's debt collection practices, on the other.

48. Mr. Blake asks this court to declare Riddle's conduct to be in violation of federal and Massachusetts' law.

Count Four: Preliminary And Permanent Injunction

49. Riddle's abusive practices, including, without limitation, calling Mr. Blake and class members with illegal frequency and unlawfully attempting to collect debts without a license and in derogation of the Banking Commissioner's January 2008 directive, have injured Mr. Blake and class members.

50. Absent injunctive relief, Riddle may continue to violate the law and injure other Massachusetts consumers whose debts it is attempting to collect.

51. Pursuant to G.L. c. 93A § 9 and other applicable laws, Mr. Blake asks this court to enjoin Riddle from attempting to collect debts in Massachusetts without a license or bond, and from attempting to collect debts in Massachusetts in violation of federal or Massachusetts' law.

Count Five: Unfair and Deceptive Acts and Practices

52. By engaging in the conduct complained of, Riddle engaged in unfair and deceptive acts and practices, in violation of M.G.L. c. 93A. As a result thereof, Mr. Blake and members of the class have been damaged in an amount to be determined at trial.

53. Riddle's unfair and deceptive debt collection practices include, without limitation:

- a. Calling alleged debtors with unreasonable and illegal frequency, in violation of M.G.L. c. 93 § 49(c), Massachusetts' Debt Collection Statute;
- b. Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number, in violation of Massachusetts Division of Banks regulation 209 C.M.R. 18.15;

- c. Calling consumers at home more than two times in each seven day period, in violation of Massachusetts Attorney General regulation 940 C.M.R. 7.04(1)(f) and Massachusetts Division of Banks regulation 209 C.M.R. 18.14(1)(d); and
- d. Attempting to collect debts while unlicensed and unbonded, in violation of M.G.L. c. 93 §§ 24-28, 49, and c. 93A.

54. The above-enumerated acts and practices constitute *per se* violations of G.L. c. 93A § 2 and are unfair and deceptive in violation of G.L. c. 93A § 2.

55. Riddle performed the actions described herein willfully and knowingly within the meaning of M.G.L. c. 93A § 9.

56. Riddle's refusal to grant reasonable relief upon demand was in bad faith, with knowledge or reason to know that its acts violated M.G.L. c. 93A §§ 2 and 9 and the regulations promulgated thereunder.

Relief Requested

WHEREFORE, Mr. Blake respectfully requests that this honorable Court:

- a. declare that the abusive collection practices set forth above violate the law;
- b. enjoin Riddle from violating the law in collecting debts from Massachusetts consumers;
- c. award statutory damages pursuant to 15 U.S.C. § 1692k(a)(2) and c. 93A, §9;

- d. award reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) and c. 93A, §9; and
- e. grant such other relief as this Court deems equitable and proper.

Jury Demand

Plaintiff demands trial by jury.

Respectfully submitted,
David Blake
By his attorneys:

/s/ John Roddy

John Roddy, BBO #424240
Elizabeth Ryan, BBO #549632
Roddy, Klein & Ryan
727 Atlantic Avenue, 2d Floor
Boston, MA 02108
Telephone: (617) 357-5500, ext. 16
Fax: (617) 357-5030

/s/ Charles Delbaum

Charles Delbaum, BBO #543225
Stuart T. Rossman, BBO#430640
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110
Telephone: (617) 542-8010
Fax: (617) 542-8028

Date: August #, 2009

CERTIFICATE OF SERVICE

I, John Roddy, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic File (NEF) and paper copies will be sent to those indicated as non-registered participants on August #, 2009.

/s/ John Roddy
John Roddy