

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:17-cv-03074 RBJ-KMT

Jason Eastman

Plaintiff,

v.

NPL Capital LLC

Defendant.

SECOND AMENDED COMPLAINT

1. Plaintiff is an adult citizen of Colorado.
2. Defendant NPL Capital LLC (hereafter “NPL”) is a limited liability company under the laws of Delaware.
3. Defendant is a debt collector within the meaning of 15 U.S.C. § 1692a(6) in that it uses any instrumentalities of interstate commerce and the mails in a business, the principal purpose of which is the collection of debts, incurred primarily for personal or household use. Defendant acquires defaulted personal mortgages and tries to collect them on a nationwide basis. While Defendant instituted a non-judicial foreclosure here, it seldom institutes foreclosures in comparison to the size of its collection portfolio and institutes them only when prior traditional debt collection tactics fail. More specifically the Defendant engaged and is engaging in the following:

a. The Defendant purchased a portfolio of defaulted debt for pennies on the dollar. In this case Plaintiff's note and deed of trust, for his personal residence, was a part of such portfolio and all the loans therein were in default when Defendant purchased them.

b. Defendant tries to realize some payment by instituting communication with the debtor on the phone asking the debtor to pay, and in this case, contacted the Plaintiff's parents to enlist them to help collect, without first securing Plaintiff's permission.

c. These collection efforts are important to debt buyers such as Defendant because the portfolios seldom contain the full history and documentation of the debt so the balance can be legally proven and proper legal action taken.

d. A pacer search of this Defendant, as of July 13, 2017, revealed that this Defendant was claiming money in the following cases in the following bankruptcy cases in the various districts abbreviated therein:

1 NPL Capital, LLC (cr) okwbke 5:12-bk-12030 13 04/24/2012 2 NPL Capital, LLC (HNFT) (cr) ncebke 5:14-bk-06468 13 11/06/2014 01/22/2016 Standard Discharge 11/03/2015 3 NPL Capital, LLC (cr) flsbke 0:11-bk-44539 13 12/19/2011 05/26/2017 Standard Discharge 02/08/2017 4 NPL Capital, LLC (cr) txsbke 4:10-bk-35468 13 07/02/2010 12/11/2015 Standard Discharge 10/14/2015 5 NPL Capital LLC (cr) moebke 4:15-bk-40680 13 02/04/2015 6 NPL Capital, LLC (cr) ilnbke 1:17-bk-11326 13 04/10/2017 7 NPL Capital, LLC (cr) ncwbke 3:13-bk-31178 13 05/30/2013 02/17/2017 Standard Discharge 01/27/2017 8 NPL Capital c/o SN Servicing Corporation (cr) flsbke 9:12-bk-32310 13 09/19/2012 9 NPL Capital, LLC (cr) flsbke 1:13-bk-25549 13 06/28/2013 Discharged 09/12/2016 10 NPL Capital LLC, its successors and assigns (cr)

cacbke 2:16-bk-15163 13 04/21/2016 11 NPL Capital, LLC (cr) cacbke 2:13-bk-20978

13 04/26/2013 04/05/2017 Discharge Withheld for Failure to Submit Cert of Instructional
Course for Personal Financial Mgmt

Plaintiff asserts this is the “tip of the iceberg” of Defendant’s collection business.

e. The Defendant’s name, “NPL” is a phrase used worldwide to signify “non-performing loans.” Defendant claims in sworn discovery that its name was selected by picking these three letters at random. There is 1 chance in 17,576 of selecting the letters “NPL” at random. As such Defendant lied in discovery to cover up its primary business of collecting non-performing loans.

f. In this case, prior to filing any notice of election and demand to foreclose on Plaintiff’s property in El Paso County, CO, on July 7, 2017, Defendant engaged in the following:

i. An mail exchange with Plaintiff’s parents Larry Eastman and Mary Eastman, without Plaintiff’s prior consent. On or about May 2, 2017 at about 10:05 MDT Lindsay Erin of Defendant e-mailed Larry and Mary Eastman telling them NPL purchased the account, that she was the account representative, and that she works “with homeowners to avoid foreclosure and eviction.”

ii. On or about May 12, 2017 at approximately 3:19 PM Lindsay Erin e-mailed Larry and Mary Eastman, without Plaintiff’s prior consent, asking that they sign an attached “authorization” so she could “share information on your son’s account”. This on its face shows Defendant contacted Larry and Mary Eastman without consent they were trying to obtain via the e-mail.

iii. On or about May 18, 2017 at approximately 3:48 PM Lindsay Erin e-mailed to Larry and Mary Eastman inquiring whether they were able to send back “the authorization today ?”

iv. On or about May 22, 2017 at approximately 2:13 PM Lindsay Erin e-mailed Larry Eastman stating that she “Left a message with your wife”, asking how she could “assist you with this as I have not heard back” and stating, “The account is moving into foreclosure.”

v. Plaintiff Jason Eastman’s home is in disrepair and is subject to a first deed of trust with Wells Fargo. As such Defendant has a strong motive to collect money outside of foreclosure and to use foreclosure and eviction as a threat to the borrower’s status quo rather than foreclosing.

g. Plaintiff thus pleads on information and belief that Plaintiff’s experience is typical of the Defendant’s primary business of collecting money and using foreclosure primarily as a threat. As such it is a debt collector.

4. Mary Eastman and Larry Eastman did not owe the debt that Defendant was trying to collect and were each a “third persons” within the meaning of 15 U.S. Code § 1692c.

5. Defendant thus, without the prior consent of Jason Eastman, acting through its agent, servant and employee who identified herself as “Lindsay Erin,” directly contacted Mary Eastman and Larry Eastman about Jason Eastman’s debt and tried to enlist them in its collection efforts. Defendant, putting the “cart before the horse” sent Larry and Mary Eastman a written

consent form to have Jason Eastman sign purporting to give consent to talk to Mary and Larry Eastman, in violation of 15 U.S.C. § 1692c(b).

6. That as a direct result thereof Plaintiff Jason Eastman suffered severe emotional distress which was a real injury and symptomatic. There were long standing emotional scars between Plaintiff Jason Eastman and Mary and Larry Eastman over the handling of obligations and the calls caused Larry Eastman and Mary Eastman to become heavily involved in the matter of this default and those wounds were opened by the third-party contact causing serious family conflict and arguments.

WHEREFORE: Plaintiff Jason Eastman prays judgment against the defendant, under the federal FDCPA, for actual damages in such sum as is just and reasonable together with statutory damages, attorney's fees and her costs herein expended.

PLAINTIFF DEMANDS TRIAL BY JURY.

/s/ Blair K. Drazic
Blair K. Drazic
Colorado Bar #39879
2470 Patterson Road, Unit 6, Ste 16
Grand Junction, CO 81505
Phone 970-623-1193
Fax 888-858-0992
E-mail: blairdrazic@gmail.com

CERTIFICATE OF SERVICE

A copy of the foregoing was sent to counsel for Defendant via the ECF system.

/s/ Blair K. Drazic