

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

[REDACTED],	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 C 4504
	)	
LVNV Funding, LLC, a Delaware	)	
limited liability company, and Resurgent	)	
Capital Services, LP, a Delaware	)	
limited partnership,	)	
	)	
Defendants.	)	<u>Jury Demanded</u>

**COMPLAINT**

Plaintiff, [REDACTED], brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), for a finding that Defendants' debt collection actions violated the FDCPA, and to recover damages, and alleges:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to § 1692k(d) of the FDCPA, and 28 U.S.C. § 1331.
2. Venue is proper in this District because: a) part of the acts and transactions occurred here; and, b) Defendants reside and transact business here.

**PARTIES**

3. Plaintiff, [REDACTED], is a citizen of [REDACTED], from whom Defendants attempted to collect a delinquent consumer debt that he allegedly owed for a Capital One credit card account, despite the fact that he had exercised his rights, pursuant to the FDCPA, to refuse to pay the debt and to be represented by the legal aid attorneys at the Chicago Legal Clinic's Legal Advocates for Seniors and

People with Disabilities program ("LASPD"), located in Chicago, Illinois.

4. Defendant, LVNV Funding, LLC ("LVNV"), is a Delaware limited liability company that acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or the telephone, in its business, the principal purpose of which is to collect, or attempt to collect, directly or indirectly, delinquent consumer debts. LVNV operates a nationwide delinquent debt collection business, and attempts to collect debts from consumers in virtually every state, including consumers in the State of Illinois via collection letters, phone calls, credit reports and lawsuits. In fact, Defendant LVNV was acting as a debt collector, as that term is defined in the FDCPA, as to the delinquent consumer debt it attempted to collect from Plaintiff.

5. Defendant, Resurgent Capital Services, LP ("Resurgent"), is a Delaware limited partnership that acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or the telephone to collect, or attempt to collect, directly or indirectly, delinquent consumer debts. Resurgent operates a nationwide delinquent debt collection business, and attempts to collect debts from consumers in virtually every state, including consumers in the State of Illinois. In fact, Defendant Resurgent was acting as a debt collector, as that term is defined in the FDCPA, as to the delinquent consumer debt it attempted to collect from Plaintiff.

6. Defendant LVNV is a bad debt buyer that buys/obtains large portfolios of defaulted consumer debts for pennies on the dollar, which it then collects upon through other collection agencies, like its sister corporation, Defendant Resurgent.

7. Defendants LVNV and Resurgent are both authorized to conduct business in the State of Illinois and maintain registered agents within the State of Illinois, see,

records from the Illinois Secretary of State, attached as Group Exhibit A. In fact, LVNV and Resurgent each conduct extensive and substantial business in Illinois.

8. Defendants LVNV and Resurgent are both licensed as debt collection agencies in the State of Illinois, see, records from the Illinois Division of Professional Regulation. In fact, Defendants LVNV and Resurgent act as collection agencies in Illinois.

### **FACTUAL ALLEGATIONS**

9. [REDACTED] is a senior citizen, with limited assets and income, who fell behind on paying his bills, including a debt he allegedly owed for a Capital One credit card. At some point in time after that debt became delinquent, Defendant LVNV allegedly bought [REDACTED]'s Capital One debt, and when Defendants began trying to collect this debt from him, he sought the assistance of legal aid attorneys at the Chicago Legal Clinic's LASPD program Defendants' collection actions.

10. Specifically, Defendant LVNV had another debt collector, Credit Control ("Credit Control"), send [REDACTED], a collection letter, dated February 3, 2017, that demanded payment of the Capital One debt. A copy of this letter is attached as Exhibit B.

11. Accordingly, on April 10, 2017, one of [REDACTED]'s legal aid attorneys at LASPD informed Defendant LVNV, through its agent Credit Control, that [REDACTED] was represented by counsel, and directed Defendant LVNV to cease contacting him, and to cease all further collection activities because [REDACTED] was forced, by his financial circumstances, to refuse to pay his unsecured debt. A copy of this letter is attached as Exhibit C.

12. Undeterred, Defendant LVNV then had its sister company, Defendant Resurgent, send a collection letter, dated April 19, 2017, directly to [REDACTED], regarding collection of the Capital One debt. Moreover, Defendants also sent this same letter to [REDACTED] in care of his attorneys in Chicago, Illinois. Copies of these letters are attached as Group Exhibit D.

13. Accordingly, on June 11, 2017, [REDACTED]'s LASPD attorney had to again inform Defendants that he was represented by counsel and that Defendants should cease communications and cease collections. A copy of this letter is attached as Exhibit E.

14. Defendants' violations of the FDCPA were material because, although Plaintiff had been informed by counsel and believed that he had the right to refuse to pay this debt and to demand that collection communications cease, Defendants' continued collection communications made Plaintiff believe that his demand had been futile and that he did not have the rights Congress had granted him under the FDCPA.

15. Moreover, violations of the FDCPA which would lead a consumer to alter his or her course of action as to whether to pay a debt, or which would be a factor in the consumer's decision making process, are material, see, Lox v. CDA, 689 F.3d 818, 827 (7th Cir. 2012). Here, Defendants' actions caused Plaintiff to question whether he was still represented by counsel as to this debt, which caused stress and confusion as to whether he was required to pay the debt at issue.

16. Defendants' collection actions complained of herein (Group Exhibit D) occurred within one year of the date of this Complaint.

17. Defendants' collection communications are to be interpreted under the

“unsophisticated consumer” standard. See, Gammon v. GC Services, Ltd. Partnership, 27 F.3d 1254, 1257 (7th Cir. 1994).

**COUNT I**  
**Violation Of § 1692c(c) Of The FDCPA --**  
**Failure To Cease Communications And Cease Collections**

18. Plaintiff adopts and realleges ¶¶ 1-17.

19. Section 1692c(c) of the FDCPA prohibits a debt collector from communicating with a consumer after a direction to cease communications, and from continuing to demand payment of a debt that the consumer has indicated that they refuse to pay. See, 15 U.S.C. § 1692c(c).

20. Here, the letter from [REDACTED]’s agent/attorney, LASPD, told Defendants to cease communications and cease collections (Exhibit C). By continuing to communicate regarding collection of this debt (Group Exhibit D), Defendants violated § 1692c(c) of the FDCPA.

21. Defendants’ violations of § 1692c(c) of the FDCPA render them liable for actual and statutory damages, costs, and reasonable attorneys’ fees, see, 15 U.S.C. § 1692k.

**COUNT II**  
**Violation Of § 1692c(a)(2) Of The FDCPA --**  
**Communicating With A Consumer Represented By Counsel**

22. Plaintiff adopts and realleges ¶¶ 1-17.

23. Section 1692c(a)(2) of the FDCPA prohibits a debt collector from communicating with a consumer if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney’s name and address, see, 15 U.S.C. § 1692c(a)(2).

24. Defendants knew that [REDACTED] was represented by counsel in connection with his debt because his attorneys at LASPD had informed Defendants, in writing, that [REDACTED] was represented by counsel, and had directed a cessation of communications with [REDACTED] (Exhibit C). By sending a collection letter directly to [REDACTED] (Group Exhibit D), despite being advised that he was represented by counsel, Defendants violated § 1692c(a)(2) of the FDCPA.

25. Defendants' violation of § 1692c(a)(2) of the FDCPA renders them liable for actual and statutory damages, costs, and reasonable attorneys' fees. See, 15 U.S.C. § 1692k.

#### **PRAYER FOR RELIEF**

Plaintiff, [REDACTED], prays that this Court:

1. Find that Defendants' debt collection actions violated the FDCPA;
2. Enter judgment in favor of Plaintiff [REDACTED], and against Defendants LVNV and Resurgent, for actual and statutory damages, costs, and reasonable attorneys' fees as provided by § 1692k(a) of the FDCPA; and,
3. Grant such further relief as deemed just.

#### **JURY DEMAND**

Plaintiff, [REDACTED], demands trial by jury.

[REDACTED],

By: /s/ David J. Philipps  
One of Plaintiff's Attorneys

Dated: June 15, 2017

David J. Philipps (Ill. Bar No. 06196285)  
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