

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT

ANDRÉA SPENCE,)
on behalf of herself and others)
similarly situated,)
)
Plaintiff,)
)
vs.)
)
CAVALRY PORTFOLIO SERVICES,)
LLC and CAVALRY SPV I, LLC,)
)
Defendants.)

Case No. SUCV2014-00850-BLS2

AMENDED CLASS ACTION COMPLAINT

1. This action seeks class-wide relief for Cavalry Portfolio Services, LLC and Cavalry SPV I, LLC's ("Cavalry's") unlawful, unfair and deceptive debt collection practices in Massachusetts. Cavalry is a high volume purchaser of defaulted consumer debt, buying charged-off credit card debts typically for pennies on the dollar.

2. After Cavalry purchases these debts it immediately and unlawfully inflates the balance by retroactively adding interest for a time period when it did not own the debt, and when the owner at the time waived the right to collect interest. Cavalry then seeks to collect this unlawful interest through litigation and other methods, and reports the inflated balance to consumer credit bureaus.

3. Cavalry's actions violate the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* ("FDCPA") and state law.

4. Specifically, the FDCPA prohibits, *inter alia*, the use of any false, deceptive or misleading statements in connection with the collection of a debt; the collection of any amount

not permitted by law; false representations as to the character, amount or status of a debt; threats to take an action which cannot legally be taken; and the communication of false credit information. 15 U.S.C. §§ 1692e(2), (5), (6), (8), (10), 1692f(1). It also requires debt collectors to give debtors certain information.

5. Massachusetts law similarly prohibits unfair and deceptive debt collection practices, M.G.L. c. 93 § 49, as well as the reporting of inaccurate information to credit bureaus, M.G.L. c. 93 § 54A. Cavalry's actions also violate M.G.L. c. 93A, § 2.

VENUE AND JURISDICTION

6. This Court has jurisdiction over this action and Cavalry pursuant to M.G.L. c. 214, §§ 1, 5; c. 212 § 3; c. 231A, §1.

7. Venue is proper in this county because Ms. Spence resides in this county, and Cavalry directed its communications to Ms. Spence in this county.

PARTIES

8. Plaintiff Andréa Spence is a resident of Jamaica Plain, Massachusetts.

9. Defendant Cavalry Portfolio Services, LLC is a limited liability company chartered under Delaware law with offices at 500 Summit Lake Drive, Suite 400, Valhalla, New York 10595. It does business in Massachusetts.

10. Defendant Cavalry Portfolio Services, LLC is engaged in the business of collecting charged-off consumer debts originally owed to others. It is licensed as a debt collector by the Massachusetts Division of Banks.

11. Cavalry Portfolio Services, LLC uses the mails in conducting its business.

12. Cavalry Portfolio Services, LLC is a debt collector as defined by the FDCPA and Massachusetts law.

13. Defendant Cavalry SPV I, LLC is a limited liability company chartered under Delaware law with offices at 500 Summit Lake Dr., Suite 400, Valhalla, NY 10595. It does business in Massachusetts.

14. Defendant Cavalry SPV I, LLC is engaged in the business of purchasing or acquiring, or claims to purchase or acquire, charged-off consumer debts originally owed to others.

15. Cavalry SPV I, LLC uses the mails and telephone system in conducting its business.

16. Cavalry SPV I, LLC is a debt collector as defined in the FDCPA, and Massachusetts law.

17. Cavalry SPV I, LLC is not licensed as a debt collector in Massachusetts.

18. Defendants Cavalry Portfolio Services, LLC and Cavalry SPV I, LLC are affiliates and are under common management and control.

FACTUAL ALLEGATIONS RELATING TO MS. SPENCE

19. On or about August 13, 2009, FIA Card Services, N.A. (“FIA”) sent Ms. Spence a collection letter on behalf of Bank of America, attached as Exhibit A, stating that she had an overdue account balance of \$21,472 on a credit card account (“BOA account”)

20. The alleged debt was incurred for personal, family or household purposes.

21. On August 20, 2009, FIA sent Ms. Spence another collection letter on behalf of Bank of America, with respect to the same credit card account that stated “This is Our Final Notice” and that the account was about to be written off as bad debt. The letter further stated that once the account was written off, it would be sold to a third party and the third party would continue to collect this balance. This letter is attached as Exhibit B.

22. Bank of America charged-off Ms. Spence's BOA account in September 2009 in the amount of \$21,355, but it retained the account until November 2011.

23. Beginning in September 2009 through January 2011, Ms. Spence received at least six letters from a series of debt collectors seeking to collect the alleged BOA account debt on behalf of Bank of America, all stating the same Balance Due of \$21,355.66. These letters are attached as Exhibit C.

24. The final letter in this series was sent on January 8, 2011 by NCO Financial Systems Inc., on behalf of Bank of America. This letter stated that the Current Balance Due on January 8, 2011 was \$21,355.66. Exhibit D.

25. In November of 2011, Bank of America reported to Experian, Equifax and Trans Union that the charge-off amount for the BOA account was \$21,355, and the High Balance was \$21,472. Exhibit E.

26. In November 2011, Bank of America sold the BOA account to Cavalry.

27. One month later, on or about December 6, 2011, Cavalry Portfolio Services, LLC sent Ms. Spence the collection letter attached as Exhibit F on behalf of Cavalry SPV I, LLC, stating that it had purchased the alleged BOA account, and that the Current Balance now due was \$ \$26,794.32. The balance had increased by \$5,438.66 in only one month.

28. The amount Cavalry sought included retroactive interest on the charged-off debt, computed at an unknown rate of interest.

29. The \$5,438.66 in interest demanded in Cavalry's first letter to Ms. Spence, after only owning the account for one month, included interest prior to the date on which Cavalry claims to have purchased the alleged debt.

30. Bank of America, and/or FIA Card Services, from which Cavalry allegedly purchased the debt, did not charge interest between the date the account was charged-off and the

date it was sold to Cavalry, and in fact waived any interest charges during this time period.

31. Bank of America, and/or FIA Card Services, did not send billing statements to Ms. Spence after it charged-off the account.

32. On information and belief, Bank of America, and/or FIA Card Services, sold the debt in the amount of \$21,355.66.

33. It is the policy and practice of Cavalry to add interest to debts for the period prior to the date on which it claims to have purchased them, even if the original creditor of the debt did not add interest during that period.

34. After its initial letter to Ms. Spence, Cavalry sent a series of collection letters seeking ever increasing amounts, based on the application of an unknown rate of interest.

35. On February 7, 2012, Cavalry Portfolio Services, LLC, on behalf of Cavalry SPV I, LLC, sent Ms. Spence the collection letter attached as Exhibit G, stating that the Current Balance of the debt was \$27,208.63.

36. On August 10, 2012, Cavalry Portfolio Services, LLC sent Ms. Spence the collection letter attached as Exhibit H, stating that the Current Balance of the debt was \$28,425.26.

37. On October 18, 2012, Cavalry Portfolio Services, LLC sent Ms. Spence the collection letter attached as Exhibit I, stating that the Current Balance of the debt was \$28,879.03.

38. On December 26, 2012, Cavalry Portfolio Services, LLC sent Ms. Spence the collection letter attached as Exhibit J, stating that the Current Balance of the debt was \$29,332.80.

39. In November 2013, Cavalry reported the debt to Trans Union in the amount of \$29,977. A copy of the trade-line from Ms. Spence's credit report is attached as Exhibit K.

40. On December 5, 2013, American Coradius International LLC sent Ms. Spence the collection letter attached as Exhibit L on behalf of Cavalry SPV I, LLC, stating that the Account Balance was \$29,977.28.

41. There was no agreement between Ms. Spence and Cavalry authorizing the imposition of interest.

FACTUAL ALLEGATIONS RELATING TO CAVALRY'S PRACTICES IN GENERAL

42. Cavalry purchases, or claims to purchase, credit card debts from banks months or years after the bank has charged-off the debts.

43. Under federal banking regulations, a credit card debt must be charged-off when it is 180 days overdue (it may be charged-off earlier). Federal Financial Institutions Examination Council, Uniform Retail Credit Classification and Account Management Policy, 65 FR 36903 (June 12, 2000).

44. Charge-off means that the credit card receivable is no longer carried on a bank's books as an asset.

45. Standard form credit card agreements used by banks provide that the terms of the agreement can be changed from time to time, and that changes beneficial to the consumer such as a reduction in or waiver of interest may be effected immediately and without notice.

46. For a variety of sound business reasons, most banks waive interest on credit card debts after charge-off for as long as the debts are held by the banks.

47. Among other reasons for this practice, banks did not, and do not, want to increase the amount of bad debts on their books, for regulatory reasons.

48. Federal regulations require banks to send periodic statements on all accounts, including defaulted accounts, for any period during which interest or fees are added to the account. 12 C.F.R. §226.5(b)(2)(I) (“[a] periodic statement need not be sent for an account if the

creditor deems it uncollectible, if delinquency collection proceedings have been instituted, if the creditor has charged-off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account. . . .”). Banks generally prefer to waive the interest and save the expense of preparing and sending statements.

49. Cavalry engages in a practice of adding interest to credit card debts after the assignor bank has waived the interest. Specifically, Cavalry adds interest for the period between charge-off and its purchase of the debt.

50. This addition of interest for this time period is improper. As assignee, Cavalry could only take what Bank of America could give. If Bank of America waived the right to add interest post-charge-off, Cavalry acquired the debt (if at all) subject to that waiver.

CLASS ALLEGATIONS

51. Ms. Spence brings this claim on behalf of a class, pursuant to Mass. R. Civ. P. 23, and/or M.G.L. c. 93A, § 9(2).

52. The class consists of (a) all individuals in Massachusetts; (b) whose debt Cavalry purchased; (c) the owner of the debt had ceased adding interest to it prior to Cavalry’s purchase; (d) Cavalry added interest for a period prior to the date it purchased the debt; and (e) Cavalry sought to collect such additional interest, and/or reported a balance including such interest to a credit reporting agency.

53. The class is so numerous that joinder of all members is not practicable.

54. On information and belief, there are hundreds if not thousands of class members.

55. There are questions of law and fact common to the class members, which common questions predominate over any questions relating to individual class members. The predominant common questions are:

- a. Whether a debt buyer can retroactively charge interest on an account it has purchased when the prior owner waived such interest;
- b. Whether Cavalry engages in a practice of adding or suing for such retroactive interest, or claiming the right to do so;
- c. Whether the interest was waived by the prior owner;
- d. Whether the proper interest rate was applied;
- e. Whether inaccurate balance information was reported to credit reporting agencies;
- f. Whether Cavalry's practices are unfair or deceptive under M.G.L. c. 93A;
- g. Whether such conduct violates the FDCPA and/or state law.

56. Ms. Spence's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

57. Ms. Spence will fairly and adequately represent the class members. Ms. Spence has retained counsel experienced in class actions and FDCPA litigation.

58. A class action is superior for the fair and efficient adjudication of this matter, in that:

- a. Individual actions are not economically feasible;
- b. Members of the class are likely to be unaware of their rights;
- c. Congress intended class actions to be the principal enforcement mechanism under the FDCPA.

COUNT I – FDCPA

59. The addition of unauthorized interest to debts is both a deceptive collection practice, in violation of 15 U.S.C. §§1692e, 1692e(2), 1692e(5), and 1692e(10), and an unfair collection practice, in violation of 15 U.S.C. §§1692f and 1692f(1).

60. The reporting to credit reporting agencies of amounts not legally owed violates 15 U.S.C. §§1692e.

61. As a result of Defendants' violations of the FDCPA, Ms. Spence and class members are entitled to actual and statutory damages pursuant to 15 U.S.C. § 1692k(a)(1), (2)(A), in an amount to be determined at trial by a jury; and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from both Defendants.

COUNT II – MASSACHUSETTS CREDIT REPORTING

62. The reporting of false information to credit bureaus violates M.G.L. c. 93, § 54A.

63. Cavalry willfully and/or negligently violated c. 93, § 54A when it reported balances to the credit bureaus that included unauthorized interest.

64. As a result of Cavalry's violations of c. 93, § 54A, it is liable for actual damages, punitive damages, in amounts to be determined at trial, and attorney's fees and costs, pursuant to c. 93 §§ 63 and 64.

COUNT III – DECLARATORY AND EQUITABLE RELIEF

65. Cavalry regularly (a) adds unauthorized interest to debts; (b) demands payment of such unauthorized interest; and (c) reports such unauthorized interest to credit bureaus.

COUNT IV – VIOLATION OF CHAPTER 93A

66. By the conduct complained of, Cavalry engaged in unfair and deceptive practices when it added interest that was not owed to class members' accounts, reported such interest as a valid debt to credit reporting agencies, and sought to collect such interest. As a result thereof, Ms. Spence and class members have been damaged in an amount to be determined at trial.

67. Cavalry's unfair and deceptive practices include the violations of the FDCPA cited above, and the following without limitation:

- Attempting to collect debts while unlicensed and unbonded, in violation of M.G.L. c. 93, §§ 24-28, 49, and c. 93A;
- Attempting to collect a debt in an unfair, deceptive or unreasonable manner, in violation of M.G.L. c. 93, § 49, and c. 93A;

- The reporting of false information to credit bureaus in violation of M.G.L. c. 93, §§ 54A, and 68;
- The use of false, deceptive, or misleading representation or means in connection with the collection of any debt, including but not limited to: the threat to take any action that cannot legally be taken; the false representation of the character, amount, or legal status of any debt; or communicating to any person credit information which is known or which should be known to be false, 209 C.M.R. 18.16 (2), (5), (8);
- The use of unfair or unconscionable means to collect or attempt to collect a debt, including but not limited to: the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. 209 C.M.R. 18.17 (1).

68. Cavalry's actions were willful and knowing within the meaning of M.G.L. c. 93A, § 9(3).

69. On March 13, 2014 Ms. Spence sent a demand pursuant to M.G.L. c. 93A, § 9(3) to Cavalry, demanding relief for Cavalry's practices, on behalf of herself and a class of similarly situated individuals in Massachusetts. A copy is attached as Exhibit M. Cavalry failed to make a reasonable offer in response, offering no relief whatsoever to the putative class.

RELIEF REQUESTED

WHEREFORE, Ms. Spence respectfully requests that this Court enter judgment in her favor and that of the class and against the defendants for:

- (1) Statutory damages;
- (2) Actual damages equal to any unauthorized interest paid with pre-judgment interest thereon, doubled or trebled;
- (3) A credit for any unauthorized interest assessed;
- (4) Attorneys' fees, litigation expenses and costs of suit;
- (5) Compensatory, nominal and punitive damages;

- (6) A declaration that Cavalry may not add interest to a debt for a period prior to its alleged ownership of the debt where such interest had not been added by the owner of the debt at that time;
- (7) An injunction prohibiting Cavalry from demanding such interest or reporting such interest to credit bureaus, and requiring Cavalry to correct any credit reports already made to delete all unauthorized interest;
- (8) Such other and further relief as is appropriate.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted
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Date: May 9, 2014