



Defendant may be served with process via its President, Andrew Robinson at 115 Flanders Road, Suite 140, Westborough, Massachusetts, 01581.

### **JURISDICTION AND VENUE**

3. This Court has federal question jurisdiction over Plaintiff's Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, et seq., claims pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d). This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

4. This Court has personal jurisdiction over Defendant because, inter alia, Defendants frequently and routinely conducts business in the State of Georgia, including the conduct complained of herein.

5. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of Georgia because a substantial part of the events or omissions giving rise to the claims occurred in this district.

6. Venue is proper in the Atlanta Division because the conduct complained of herein occurred in DeKalb County which is in the Atlanta Division.

### **FACTUAL ALLEGATIONS**

7. Plaintiff is a 55-year-old woman with deteriorating health. She is disabled, unable to engage in competitive employment, and is in the process of obtaining disability insurance benefits through the Social Security Administration.

8. Plaintiff is allegedly obligated to pay a consumer debt arising out of prepaid admission plan to Six Flags Theme Parks. The admission pass was purchased for the entertainment of Plaintiff and her family. Plaintiff is therefore, a “consumer”, as that term is defined by 15 U.S.C. § 1692a(3).

9. Defendant is a collection agency specializing in the collection of consumer debt.

10. Defendant uses interstate commerce and/or mail in its business in the collection of consumer debts.

11. Defendant manages, and collects upon, thousands of consumer debt accounts annually.

12. Defendant is, therefore, a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

13. As a result of her disability and inability to maintain employment, the Plaintiff has defaulted on the debt originating with Six Flags Theme Parks. On January 11th, 2022, the Defendant caused to be sent to the Plaintiff, an email demanding payment of \$116.84, which, upon information and belief, is the balance owed on the debt described herein. A copy of this email is attached hereto as Exhibit 1.

14. On November 30, 2021, the Consumer Financial Protection Bureau (CFPB) published amendments to 12 C.F.R. Part § 1006 (hereinafter referred to as Regulation F).

15. Regulation F was issued by the Bureau of Consumer Financial Protection pursuant to sections 814(d) and 817 of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692b, 1692o; Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank act); 12 U.S.C. § 5481 et seq.; and paragraph (b)(1) of § 104 of the Electronic Signatures in Global and National Commerce Act (E-sign Act), 15 U.S.C. § 7004.

16. The Fair Debt Collection Practices Act and, specifically, regulation F apply to the Defendant at all times relevant hereto.

17. As of the date of enactment for Regulation F, where a debt collector communicates with a consumer electronically in connection with a collection of a debt using a specific email address, it must include in such communication “a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt-out of further electronic communications by the debt collector to that email address.” See, Regulation F, 12 C.F.R. § 1006.6(e); 15 U.S.C. § 1692c.

18. The Defendant’s email, Exhibit 1, does not contain “a clear and conspicuous statement” describing a reasonable and simple method by which the Plaintiff could opt-out of future email communications.

19. As a result of the Defendant failing to comply with the Act and Regulations, the Plaintiff was, and continues to be, hindered in her ability to cease email communications from the Defendant.

### **INJURIES-IN-FACT**

20. The FDCPA provides consumers with “statutorily-created rights to be free from ‘being subjected to false, deceptive, unfair, or unconscionable means to collect a debt.’” *McCamis v. Servis One, Inc.*, No. 8:16-CV-1130-T-30AEP, 2016 U.S. Dist. LEXIS 99492 (M.D. Fla. July 29, 2016); *Church v. Accretive Health, Inc.*, 654 Fed. Appx. 990, 2016 U.S. App. LEXIS 12414, 2016 WL 3611543 (11th Cir. 2016).

21. An injury-in-fact sufficient to satisfy Article III standing requirements “may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing.” *Church*, at 993, quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982).

22. Violation of statutory rights are not a “hypothetical or uncertain” injury, but one “that Congress has elevated to the status of a legally cognizable injury through the FDCPA.” *McCamis*, at 4, citing *Church*, at 3.

23. Defendant is subjecting Plaintiff to false, deceptive, and unfair means to collect the debt.

24. Defendants acts and omissions caused particularized harm to the Plaintiff in that it hindered and restricted her ability to terminate email communications regarding her debt from the Defendant.

25. Accordingly, through the violation of Plaintiffs’ statutorily created rights under the FDCPA, Plaintiff has suffered an injury-in-fact sufficient to establish Article III standing.

### **DAMAGES**

26. As a result of the Defendant’s actions and/or omissions, Plaintiff has suffered actual damages, including but not limited to the following:

- a.) Being subjected to deceptive, and unfair debt collection practices;
- b.) Uncompensated time expended away from activities of daily living, to confer with counsel regarding the Defendant's collection efforts;
- c.) Plaintiff has been deprived of her ability to opt out of email communications; and

d.) Plaintiff has experienced anxiety and worry caused by concern that Defendant was going to continue sending unwanted email notices to the Plaintiff.

## **CAUSES OF ACTION**

### **COUNT I**

#### **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692 et. seq.**

##### *Violations of 15 U.S.C. § 1692c and subparts*

27. The Defendant's failure to comply with C.F.R. § 1006.6(e) was likewise a violation of 15 U.S.C. § 1692c governing communications between a debt collector and a consumer.

##### *Violations of 15 U.S.C. § 1692f and its subparts*

28. The conduct of the Defendant as described herein was unfair in that it consciously deprived the Plaintiff of the information she needed to exercise her rights under the Fair Debt Collection Practices Act and the federal regulations to cease email communications.

### **COUNT II**

#### **VIOLATIONS OF THE GEORGIA FAIR BUSINESS PRACTICES ACT O.C.G.A. § 10-1-390, et seq.**

29. Plaintiff incorporates by reference paragraphs 1 through 28 as though fully stated herein.

30. O.C.G.A. § 10-1-390 et seq is commonly known as the "Fair Business Practices Act of 1975" (the "GFBPA").

31. The purpose of the GFBPA, is to protect consumers from unfair and/or deceptive practices in the conduct of any trade or commerce in part or wholly in the state. O.C.G.A. § 10-1-391.

32. O.C.G.A. § 10-1-391 directs that the GFPBA is to be interpreted and applied liberally and in harmony with the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), which implements the FDCPA.

33. O.C.G.A. § 10-1-393(a) of the GFBPA broadly prohibits unfair and/or deceptive business practices.

34. Defendant intentionally engaged in unfair and deceptive business practices, as set forth herein, in an effort to collect a consumer debt.

35. Defendant's conduct has implications for the consuming public in general.

36. Defendant's conduct negatively impacts the consumer marketplace.

37. Upon information and belief, Defendant does not maintain a place of business in Georgia and has no assets in Georgia, thus relieving Plaintiffs of the Notice and Demand requirements of O.C.G.A. § 10-1-399(b).

38. As a result of Defendant's violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover general damages pursuant to O.C.G.A. § 10-1-399(a).

39. As a result of Defendant's intentional violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover exemplary damages pursuant to O.C.G.A. § 10-1-399(a).

40. As a result of Defendant's intentional violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover treble damages pursuant to O.C.G.A. § 10-1-399(c).

41. Plaintiff is entitled to recover reasonable attorney's fees and expenses of litigation pursuant to O.C.G.A. § 10-1-399(d).

**TRIAL BY JURY**

42. Plaintiff is entitled to and hereby requests a trial by jury.

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

- a.) Plaintiff's actual damages;
- b.) Statutory damages pursuant to 15 U.S.C. § 1692k;
- c.) Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k
- d.) General, exemplary, and treble damages pursuant to O.C.G.A. § 10-1-399(a) & (c);

- e.) Reasonable attorney's fees and costs pursuant to O.C.G.A. § 10-1-399(d); and
- f.) Such other and further relief as may be just and proper.

Respectfully submitted this 24th day of January, 2022.

**BERRY & ASSOCIATES**

/s/ Matthew T. Berry

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