

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOANNA GLENN

Plaintiff,

v.

Case No.
Hon.
Magistrate Judge

FDCPA AND RCPA COMPLAINT

CONVERGENT OUTSOURCING, INC.

Defendant.

/

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff JOANNA GLENN (“Plaintiff” or “Glenn”) by and through counsel, The Law Offices of Brian Parker, PC and bring this Action against the above listed Defendant, CONVERGENT OUTSOURCING, INC. (“Convergent” or “Defendant”) on the grounds set forth herein:

I. PRELIMINARY STATEMENT OUTLINING THE LAW IN THIS CASE

1.

Plaintiff brings this action for damages and injunctive relief based upon the Defendant’s violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.* and The Regulation of Collection Practices Act (RCPA), and codified at MCL 445.251 *et seq* and the holding in *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC*, 758 F.3d 777 (6th Cir. 2014)..

II. FACTS OF THE CASE AGAINST DEFENDANT

2.

In 2019, Plaintiff was sued on a student loan debt in three cases in Ingham County: *National Collegiate Student Loan Trust 2007-4 (NCSLT) v Joanna Glenn* at Case No. 19-0403-GC, *National Collegiate Student Loan Trust 2007-3 (NCSLT) v Joanna Glenn* at Case No. 19-0402-GC in 55th District Court and *National Collegiate Student Loan Trust 2007-4 (NCSLT) v Joanna Glenn* at Case #19-97-CK in the 30th Circuit Court.

3.

The Plaintiff disputed that she owed the debts to NCSLT and answered the complaints, obtained an attorney and eventually resolved the litigation with NCSLT that ended with the three cases being dismissed with prejudice. **Please See Exhibit 1.**

4.

Plaintiff received a letter from Defendant Convergent dated January 13, 2020 stating that it was a debt collector and it was collecting upon a student loan debt for *National Collegiate Student Loan Trust 2007-3* in the amount of \$5,293.96 and with an account number of 0001030086. The Defendant offered to resolve the debt with a 40% discount if the offer was accepted in 60 days. **Please see Exhibit 2.**

5.

Plaintiff received a letter dated January 18, 2020 from Defendant Convergent stating that it was a debt collector and it was collecting upon a student loan debt for *National Collegiate Student Loan Trust 2007-4* in the amount of \$24,040.93 and with an account number of 0001030084. The Defendant offered to resolve the debt with a 40% discount if the offer was accepted in 60 days. **Please see Exhibit 3.**

6.

Ms. Glenn called Convergent on January 23,2020 at 877-884-2302 to dispute she owed

the debts and inform Convergent that the cases were resolved with the companies Convergent claimed to represent in its letters. **Please see Plaintiff's Affidavit at Exhibit 4.**

7.

Ms. Glenn then received a letter from Convergent dated January 24, 2012 that stated that the debt of #0001030084 had been verified and the letter stated, "This debt is valid, attached is verification of the debt." The letter stated that Ms. Glenn now owed \$24,073.20. **Please see Exhibit 5.**

8.

The verification of debt page was titled "Loan Payment History Report" and was dated 2020-01-10. **Please see Exhibit 5.** It provided no mention of National Collegiate Student Loan Trust 2007-4, no account number from the initial letter, no mention of the amount owed of \$24,073.20 or who the creditor of the debt was. The Loan Payment History Report had the name of Ms. Glenn's attorney and address from the case that was resolved.

9.

Ms. Glenn received another letter from Convergent dated January 24, 2012 that stated that the debt of #0001030086 had been verified and the letter stated, "This debt is valid, attached is verification of the debt." The letter stated that Ms. Glenn now owed \$5306.20. **Please see Exhibit 6.**

10.

The verification of debt page was titled "Loan Payment History Report" and was dated 2020-01-10. **Please see Exhibit 6.** It provided no mention of National Collegiate Student Loan Trust 2007-4, no account number from the initial letter, no mention of the amount owed of \$5306.20 or who the creditor of the debt was. The Loan Payment History Report had the name of Ms. Glenn's attorney and address from the case that was resolved.

11.

Even though the letters at **Exhibit 5** and **Exhibit 6** claimed to verify the debt and amount, the debt amounts from the 2020-1-10 Loan Payment History Reports don't match the amounts requested from Convergent's initial letters at **Exhibit 2** (\$24,040.93) and **Exhibit 3** (\$5293.96) that were sent after the date of 2020-1-10.

12.

Defendant Convergent is pursuing Plaintiff for debts she does not owe and have been resolved with NCSLT and is failing to properly validate/verify the debts they are claiming Plaintiff owes. The Verification letters at **Exhibit 5** and **Exhibit 6** contain false information, don't properly verify who the creditor is and provide incomplete validation of the debt amounts in violation of the holding in *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC*, 758 F.3d 777 (6th Cir. 2014).

13.

As a result of the wrongful actions of Convergent in pursuing a debt it has no right to collect upon, Plaintiff has suffered damages in that she must now defend herself against a debt collector pursuing a debt that was resolved in a lawsuit with the debt collector's client and the Defendant is making false collection attempts with bogus verifications and false debt amounts which are causing Ms. Glenn great stress and fear of real tangible attacks on her personal finances from the same student loan debts she had resolved in court and thusly, she is entitled to a recovery against the Defendant under the FDCPA and RCPA and any attorney fees and cost expended to bring this action against Convergent. (*Exhibit 4, Plaintiff's Affidavit*).

III. PARTIES

14.

Defendant Convergent Outsourcing, Inc. (“Convergent”) is a debt collector organized as a Washington State professional corporation with its Resident Agent Address at The Corporation Company, 40600 Ann Arbor Rd. E. Ste. 201, Plymouth MI 48170. Convergent is a collection agency collecting student loan debt for NCSLT entities under the FDCPA and RCPA. The alleged debt being collected by Convergent is a “debt” as defined by 15 U.S.C. § 1692a (5). The alleged student loan debt is a “consumer debt” as defined by the RCPA under MCL 445.251(a).

15.

Plaintiff is a resident of the City of Mason, Ingham County, State of Michigan and considered a Consumer under the FDCPA and RCPA.

IV. JURISDICTION AND VENUE

16.

Jurisdiction arises under 15 U.S.C. § 1692k (d) and 28 U.S.C. §§ 1331, 1337. This court has jurisdiction over this Complaint pursuant to the FDCPA, 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331 and 28 U.S.C. § 1367. Venue in this judicial district is proper because the pertinent events took place here. Supplemental jurisdiction for Plaintiff’s state law claims arise under 28 U.S.C. § 1367. *Baltierra v. Orleans Associates PC*, No. 15-cv-10008 (E.D. Mich. Oct. 7, 2015).

17.

The factual basis of the RCPA claim is the same as the factual basis of the FDCPA claim and this district court has “supplemental jurisdiction over all other claims that are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. 28 U.S.C. § 1367(a). *Lovelace v.*

Stephens & Michaels Assocs., Inc., No. 07-10956, 2007 WL 3333019, at *2 (E.D. Mich. Nov. 9, 2007) (stating that FDCPA claims and RCPA claims are simply duplicates and “need not be addressed separately”).

18.

Venue is appropriate in this federal district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events giving rise to Plaintiff’s claims occurred within this federal judicial district, and the Defendants are subject to personal jurisdiction in the State of Michigan at the time this action is commenced.

V. STATUTORY STRUCTURE

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

19.

The FDCPA was passed to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuse. 15 U.S.C. § 1692.

20.

Plaintiff is a consumer under the FDCPA. Under the FDCPA, a “consumer” is any natural person obligated or allegedly obligated to pay any debt. 15 U.S.C. §1692a (3).

21.

Under the FDCPA, “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes. 15 U.S.C. § 1692a (5).

22.

Under the FDCPA, a “debt collector” is any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose for which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another. 15 U.S.C. § 1692a (6). Defendant is a debt collector.

23.

The Defendants regularly attempt to collect consumer debts alleged to be due another (NCSLT and US Bank) and are a debt collector as provided in 15 U.S.C. 1692a (6). The FDCPA is a strict liability statute, which provides for actual or statutory damages upon the showing of one violation.

24.

Whether a debt collector's actions are false, deceptive, or misleading under §1692e is based on whether the "least sophisticated consumer" would be misled by defendant's actions. *Wallace v. Washington Mutual Bank*, 683 F.3d. 323, 327 (6th Cir. 2012), *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324, 329 (6th Cir.2006). See *Currier v First Resolution Inv. Corp.*, 762 F.3d 529, 535 (6th Cir. 2014); *Statton v Portfolio Recovery Assocs., LLC*, 770 F.3d 443, 450 (6th Cir. 2014).

25.

Section 1692e provides: “A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. To prohibit deceptive practices, the FDCPA, at 15 U.S.C. § 1692e, outlaws the use of false, deceptive, and misleading collection practices and names a non-exhaustive list of certain *per se* violations of false and deceptive collection conduct. 15 U.S.C. § 1692e (1) -(16). Among the *per se* violations prohibited by that section are using any false representation or deceptive

means to collect or attempt to collect any debt or to obtain information concerning a consumer,
15 U.S.C. § 1692e (10).

26.

Section 1692e further provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

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

REGULATION OF MICHIGAN COLLECTION PRACTICES ACT (RCPA)

27.

The Regulation of Michigan Collection Protection Act (RCPA), MCL 445.251 et seq. is an act to regulate the collection practices of certain persons; to provide for the powers and duties of certain state agencies; and to provide penalties and civil fines.

28.

“Claim” or “debt” means an obligation or alleged obligation for the payment of money or thing of value arising out of an expressed or implied agreement or contract for a purchase made primarily for personal, family, or household purposes.

29.

“Collection agency” means a person directly or indirectly engaged in soliciting a claim for collection or collecting or attempting to collect a claim owed or due or asserted to be owed or due another, or repossessing or attempting to repossess a thing of value owed or due or

asserted to be owed or due another person, arising out of an expressed or implied agreement. Collection agency includes a person representing himself or herself as a collection or repossession agency or a person performing the activities of a collection agency, on behalf of another, which activities are regulated by Act No. 299 of the Public Acts of 1980, as amended, being sections 339.101 to 339.2601 of the Michigan Compiled Laws. Collection agency includes a person who furnishes or attempts to furnish a form or a written demand service represented to be a collection or repossession technique, device, or system to be used to collect or repossess claims, if the form contains the name of a person other than the creditor in a manner indicating that a request or demand for payment is being made by a person other than the creditor even though the form directs the debtor to make payment directly to the creditor rather than to the other person whose name appears on the form. Collection agency includes a person who uses a fictitious name or the name of another in the collection or repossession of claims to convey to the debtor that a third person is collecting or repossessing or has been employed to collect or repossess the claim.

30.

Defendants are regulated agencies under the RCPA. See *Misleh v Timothy E. Baxter & Associates*, 786 F Supp. 2d 1330(E.D. Mich 2011; *Newman v. Trott & Trott, PC*, 889 F. Supp. 2d 948 - Dist. Court, ED Michigan 2012; *Baker v. Residential Funding Co., LLC*, 886 F. Supp. 2d 591 - Dist. Court, ED Michigan 2012.

31.

“Communicate” means the conveying of information regarding a debt directly or indirectly to a person through any medium. “Consumer” or “debtor” means a natural person obligated or allegedly obligated to pay a debt. “Creditor” or “principal” means a person who offers or extends credit creating a debt or a person to whom a debt is owed or due or asserted to

be owed or due. Creditor or principal does not include a person who receives an assignment or transfer or a debt solely for the purpose of facilitating collection of the debt for the assignor or transferor. In those instances, the assignor or transferor of the debt shall continue to be considered the creditor or the principal for purposes of this act.

32.

“Person” means an individual, sole proprietorship, partnership, association, or corporation. Defendants are regulated persons under § 445.251(g)(xi). Defendant is violating the following RCPA subsections:

445.252 Prohibited acts.

- (a) Communicating with a debtor in a misleading or deceptive manner, such as using the stationery of an attorney or credit bureau unless the regulated person is an attorney or is a credit bureau and it is disclosed that it is the collection department of the credit bureau; and
- (b) Using forms or instruments which simulate the appearance of judicial process; and
- (d) Using forms that may otherwise induce the belief that they have judicial or official sanction.
- (e) Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt; and
- (f) Misrepresenting in a communication with a debtor 1 or more of the following:
 - (i) The legal status of a legal action being taken or threatened.
 - (ii) The legal rights of the creditor or debtor.
 - (iii) That the nonpayment of a debt will result in the debtor's arrest or imprisonment, or the seizure, garnishment, attachment, or sale of the debtor's property; and
- (n) Using a harassing, oppressive, or abusive method to collect a debt...
- (q) Failing to implement a procedure designed to prevent a violation by an employee.

33.

The Plaintiff seeks Statutory Damages, Actual Damages, Injunctive Relief, attorney fees,

costs, and all other relief, equitable or legal in nature, as deemed appropriate by this Action context, pursuant to the FDCPA and RCPA and all other common law or statutory regimes. The Plaintiff requests that she be awarded:

- a. Actual Damages suffered by the Plaintiff from false collection attempts bring back stress and fear from previously being sued on the same debts that were resolved by the alleged creditor here; and
- b. Injunctive Relief stopping Defendants from continuing their plan and scheme through debt collection of false debts as alleged here; and
- c. Attorney fees and costs under the FDCPA and RCPA.

VI. CLAIMS FOR RELIEF

Count 1-Fair Debt Collection Practices Act as to Convergent

(15 U.S.C. 1692e and 1692e (10))

34.

Plaintiff realleges the aforementioned paragraphs. Defendant has violated the FDCPA.

35.

As stated above, Defendant violated 15 U.S.C. 1692e and 15 U.S.C 1692e(10) by using false, deceptive and misleading representations and means in connection with the collection methods exemplified by the Convergent misrepresentations in (*Exhibits 2-3 and 5-6*) which are material to show the illegal conduct of Defendant.

36.

Through debt collection letters, Defendant falsely claimed it had a right to seek collection on student loan debt its creditor client had resolved and had dismissed a lawsuit with prejudice based upon the same debts Convergent now pursues.

37.

Because of Defendant's material and wrongful conduct, Plaintiff has suffered statutory, actual, emotional and financial damages and seeks their attorney fees and costs under the FDCPA.

38.

Plaintiffs seek judgment against the Defendant in whatever amount that Plaintiff is entitled to plus statutory, actual and consequential damages and the costs and expenses of this action.

Count 2-Fair Debt Collection Practices Act as to Convergent
(15 U.S.C. 1692f)

39.

Plaintiff realleges the aforementioned paragraphs. Defendant has violated the FDCPA.

40.

Defendant collected on the debt and violated 15 U.S.C. 1692f, and f(1) by seeking to obtain unjustified and wrongful debt amounts with unsupported and contradictory paperwork as part of a "dispute validation" sent at Exhibit 5 and Exhibit 6.

41.

Defendant Convergent sought to collect on the debt and violated 15 U.S.C. 1692f and f(1) with no proof of or ownership of the debt to collect any amount, interest, fee or any charges it claims are owed through Exhibit 5 and Exhibit 6.

42.

Using material misrepresentations as to the debt amount and as to the right to collect for its creditor client, Defendant falsely claimed they had a right to seek collection on student loan debt against Plaintiff when they lacked both the proof and validation of the debts.

43.

Because of Defendant's material and wrongful conduct, Counter Plaintiffs have suffered statutory, actual, emotional and financial damages and seeks their attorney fees and costs under the FDCPA.

44.

Plaintiffs seek judgment against the Defendant in whatever amount that Plaintiffs are entitled to plus statutory, actual and consequential damages and the costs and expenses of this action.

Count 3-Fair Debt Collection Practices Act as to Convergent

(15 U.S.C. 1692g)

45.

Plaintiff realleges the aforementioned paragraphs. Defendant has violated the FDCPA.

46.

Defendant collected upon the Glenn debt and validated/verified the right to collect the disputed and resolved debt with false proof and evidence in violation of the 6th Circuits Validation standards at *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC*, 758 F.3d 777 (6th Cir. 2014).

47.

Defendant validated and verified the debt amounts it seeks from Plaintiff with false and contradictory evidence at **Exhibit 5** and **Exhibit 6**.

48.

Because of Defendant's material and wrongful conduct, Counter Plaintiffs have suffered statutory, actual, emotional and financial damages and seeks their attorney fees and costs under the FDCPA.

49.

Plaintiffs seek judgment against the Defendant in whatever amount that Plaintiffs are entitled to plus statutory, actual and consequential damages and the costs and expenses of this action.

Count 4-Fair Debt Collection Practices Act as to Convergent

(15 U.S.C. 1692e(2)(A))

50.

Plaintiff realleges the aforementioned paragraphs. Defendant has violated the FDCPA.

51.

The Defendant has violated 15 U.S.C. §1692e(2)(A) in falsely representing that it has the right to collect false and disputed debt at **Exhibit 2** and **Exhibit 3** with false and contradictory debt amounts and improper validations at **Exhibit 5** and **Exhibit 6**.

52.

Because of Defendant's material and wrongful conduct, Counter Plaintiffs have suffered statutory, actual, emotional and financial damages and seeks their attorney fees and costs under the FDCPA.

53.

Plaintiffs seek judgment against the Defendant in whatever amount that Plaintiffs are entitled to plus statutory, actual and consequential damages and the costs and expenses of this action.

Wherefore, Plaintiffs seeks judgment against Defendant for:

- a. Statutory and Actual damages for Plaintiff s. **Please see the Affidavit at Exhibit 4-regarding damages**; and
- b. Costs and reasonable attorney's fees pursuant to 15 U.S.C. 1692k(a)(3) with a judicial

- review; and;
- c. Actual Damages in the form of the required elevated responses, stress, and out of pocket costs of having to respond to a false debt collection at **Exhibit 2** and **Exhibit 3** and **Exhibit 5 and Exhibit 6**; and
 - d. Such further relief as the court deems just and proper

Count 5-Michigan Collection Practices Act as to Convergent

54.

Defendants have violated the RCPA. Defendants' violations of the RCPA include, but are not necessarily limited to, the following:

- a. Defendants violated MCLA 445.252(n) by using a harassing, oppressive, or abusive method to collect a debt, using **Exhibits 2-3 and 5-6** as mentioned above;
- b. Defendants violated MCLA 445.252(e) Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt at (*Exhibits 2-3 and 5-6*) and providing no proof of ownership interest in the debts; and
- c. Defendants violated MCLA 445.252(f) Misrepresenting in a communication with a debtor 1 or more of the following:
 - (i) The legal status of a legal action being taken or threatened.
 - (ii) The legal rights of the creditor or debtor at (*Exhibit 2-3 and 5-6*);
- d. Defendant violated MCLA 445.252(q) by failing to implement a procedure designed to prevent a violation by an employee by continuing collection efforts on resolved lawsuit debts that lack any proof the debt was owed to NCSLT or that Convergent had a right to collect on the debt; and

- e. Defendants violated MCLA 445.252(b) by creating false documents designed to simulate the appearance of validation and verification of the debt (*Exhibits 5-6*) and
- f. Defendants violated MCLA 445.252(a) by communicating with debtors in a deceptive manner by falsely claiming to have the right to sue Plaintiffs. (*Exhibit 2-3 and 5-6*).

Wherefore, Plaintiffs seeks judgment against Defendants for:

- a. Statutory damages for Plaintiff in the amount of \$50.00, trebled to \$150.00 for a willful violation, pursuant to M.C.L. 445.257(2);
- b. Equitable, declaratory and injunctive relief pursuant to M.C.L. 445.257(1), including but not limited to, a declaration that defendant's debt collection practices violated the RCPA, as well as an injunction, enjoining Defendants from using (*Exhibits 2-3 and 5-6*) which violates Michigan law; and
- c. Reasonable attorney's fees and court cost pursuant to M.C.L. 445.257(2) with judicial sanction.
- d. Actual Damages in the form of the required elevated responses, stress, and out of pocket costs of having to respond to false debt collection attempts under MCL 600.2145 (*Exhibit 4*).

VI. JURY TRIAL DEMAND

Plaintiff demands a Trial by Jury on all issues.

Respectfully submitted,

February 3, 2020

s/Brian P. Parker
BRIAN P. PARKER (P48617)
Attorney for Plaintiff