

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

TRAVIS HOWARD, and VANESSA
HOWARD, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

LVNV FUNDING, LLC, and RESURGENT
CAPITAL SERVICES, LP,

Defendants.

Case No. 19-cv-93

CLASS ACTION

FIRST AMENDED COMPLAINT

Travis Howard and Vanessa Howard, (“Plaintiffs”), individually and on behalf of all others similarly situated, bring this action against LVNV Funding, LLC (“LVNV”), and Resurgent Capital Services, LP (“Resurgent”) (collectively with LVNV, “Defendants”), and allege as follows:

NATURE OF THE ACTION

1. This action seeks damages, attorneys’ fees, and costs against Defendants for their violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692 *et seq.*

JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over the claims at issue under 28 U.S.C. § 1331 and 15 U.S.C. § 1692.

3. The Court has personal jurisdiction over Defendants because the claims at issue arose in this district and Defendants do substantial business in this district.

4. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events and/or omissions at issue occurred in this district.

PARTIES

5. Plaintiffs are persons that are residents of Cambria County, Pennsylvania.
6. Defendants are business entities with their principal place of business in Greenville, South Carolina.
7. LVNV's sole business is buying consumer debt to collect debt for profit.
8. LVNV buys debt at steep discounts, most (if not all) times for pennies on the dollar.
9. Resurgent's sole business is collecting debts owed to others.
10. Defendants use instrumentalities of interstate commerce, such as telephone, mail, and the internet, to collect debt.

FACTUAL ALLEGATIONS

11. On August 11, 2018, Plaintiffs filed for protection under Chapter 13 of the Bankruptcy Code. *See Ex. A.*
12. Plaintiffs did not list any debt owed to Defendants in their bankruptcy petition. *Id.*
13. On September 26, 2018, Defendants filed a proof of claim (the "POC") in Plaintiffs' bankruptcy case. *See Ex. B.*
14. The POC concerned a debt allegedly owed to Credit One Bank. *Id.* at p. 2.
15. Defendants listed the claim as owed in the amount of \$309.36. *Id.*
16. Defendants stated that this amount did not include "interest or other charges." *Id.*
17. On an "Account Detail" page attached to the POC, Defendants listed the entire amount of \$309.36 as "Principal." *Id.* at p. 4.
18. Defendants claimed the "Interest" and "Fees" on the debt were "\$0.00." *Id.*
19. The debt underlying the POC was incurred for family, personal and/or household purposes.

20. The accuracy of the POC, as well as the “Account Detail” and “Account Summary Supplemental Data” pages attached to the POC, were attested to and signed under the penalty of perjury by a “Claims Processor” employed by Defendants. *See* Ex. B, p. 3.

21. The POC filed by Defendants was false, misleading, and/or deceptive because it falsely stated the amount of principal on the debt at issue and falsely stated that the debt did not include interest and fees.

22. Defendants knew they overstated the principal owed on the debt and that the debt included interest and fees because Defendants were given written records by Credit One Bank when Defendants bought the debt. *See* Ex. C, D.

23. These records showed the debt underlying the proof of claim included principal, interest, and fees. *Id.*

24. Despite Defendants’ knowledge, Defendants instructed their employees and agents to file the POC, falsely overstating the principal owed on the debt at issue and falsely asserting that no interest or fees were included in the debt.

25. When Defendants filed the POC, they were engaged in a systemic practice of filing proofs of claim that made false representations similar to those made to Plaintiffs.

26. During this time, Defendants used an automated system to file proofs of claim.

27. Defendants coded their system to label the entire amount of a debt underlying a proof of claim as principal, even if Defendants held documents or other information that showed, or even if Defendants otherwise knew, that the balance of a debt underlying a proof of claim included interest and fees, in addition to principal.

28. Defendants’ practice of intentionally misreporting the principal, interest, and fees on the proofs of claim they filed is a material violation of the FDCPA.

29. Although it always was necessary to accurately list principal, interest, and fees on debts underlying proofs of claim, the bankruptcy rules were amended in 2011 to specifically require the itemization of interest and fees on proof of claim filings regarding open-end consumer credit accounts. *See In re Maddux*, 567 B.R. 489, 493-95, 500 (Bankr. E.D. Va. 2016); Fed. R. Bankr. P. 3001(c)(2)(A).

30. The purpose of this amendment is obvious: the accurate disclosure of principal, interest, and fees is necessary to properly and fully evaluate a proof of claim.

31. By intentionally misstating the principal owed, and by falsely stating no interest or fees were included in a proof of claim, Defendants denied debtors the information necessary to evaluate Defendants' proof of claim filings.

32. Defendants had an affirmative obligation to accurately list the principal of a debt and truthfully state whether interest and fees are included in a claim when collecting consumer debts by filing proofs of claim.

33. Defendants' proof of claim filing practices violated the rights of Plaintiffs and the class members, denied Plaintiffs and the class members information Congress deemed material for purposes of bankruptcy proceedings, needlessly increased the burden and expense of Plaintiffs and the class members' bankruptcies, and created an undue burden for the court system.

34. In contrast to the multiple harms Defendants' actions cause, there was one benefit provided by Defendants' proof of claim filing practices: Defendants were not burdened by the time and expense of truthfully stating the principal, interest, and fees on their proof of claim filings.

35. By freeing themselves of this time and expense, Defendants provided themselves a competitive advantage over other creditors and debt collectors that incurred the time and expense to truthfully disclose the principal, interest, and fees on their proof of claim filings.

CLASS ALLEGATIONS

36. Plaintiffs bring this action individually and on behalf of all others similarly situated under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

37. Plaintiffs seek to certify the following class: “All persons who filed for bankruptcy in Pennsylvania, had Defendants file a proof of claim between June 6, 2018, to December 31, 2018, and had Defendants represent in the claim that the debt underlying the claim was composed entirely of principal, even though Defendants held an account statement, data string, or other document that showed the debt included interest and/or fees, in addition to principal.”

38. Plaintiffs reserve the right to expand, narrow, or otherwise modify the class as the litigation continues and discovery proceeds.

39. Numerosity: Joinder is impracticable. On information and belief, the members of the class number in the hundreds.

40. Ascertainability: The class is ascertainable because Defendants, the courts, and creditors keep and collect relevant information on each class member.

41. Typicality: Plaintiffs’ claims are typical of the claims of the class because their claims are based on the same legal theories and arise from the same conduct.

42. Commonality and Predominance: Plaintiffs and the class members share numerous common questions of law and fact that will drive the resolution of this litigation and predominate over any individual issues. Each class member requires the same evidence and the same legal arguments to prove whether Defendants’ practice of overstating principal and falsely stating that their proofs of claim include no interest or fees is unlawful. Defendants’ practice of overstating principal and falsely stating that their proofs of claim include no interest or fees either is unlawful as to all class members or as to none of them. These common questions and other similar common

questions of law and fact will drive the resolution of this litigation and predominate over any individual issues.

43. Adequacy: Plaintiffs are adequate representatives of the class because Plaintiffs' interests do not conflict with the interests of the class members. Plaintiffs will fairly, adequately, and vigorously represent and protect the interests of the class, and Plaintiffs have no interests antagonistic to the class. Plaintiffs also have retained counsel who are competent and experienced in the prosecution of class action and FDCPA litigation.

44. Superiority: The injury sustained by each class members is not of such magnitude that it is economically feasible to prosecute individual actions against Defendants. Requiring many injured plaintiffs to file individual actions would impose a crushing burden on the court system and almost certainly lead to inconsistent judgments. By contrast, class treatment presents far fewer management difficulties and provides benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

COUNT I
Violation of the Fair Debt Collection Practices Act
15 U.S.C. §§ 1692, *et seq.*

45. Plaintiffs repeat and re-allege all prior allegations as if set forth at length herein.

46. This claim is brought individually and on behalf of the class.

47. Plaintiffs and the class members are consumers, the debts underlying their proofs of claim are debts, and Defendants are debt collectors under the FDCPA. 15 U.S.C. §§ 1692a(3), (5), (6).

48. Defendants' actions and practices described herein constitute as false, deceptive and/or misleading representations or means in connection with the collection of a debt, in violation of 15 U.S.C. § 1692e.

49. As a result of Defendants' failure to comply with the provisions of the FDCPA, and the resulting injury and harm Defendants' failure caused, Plaintiffs and the class members seek statutory damages, and attorneys' fees and costs under 15 U.S.C. § 1692k.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- a. An order certifying the proposed class, appointing Plaintiffs as class representatives, and appointing Plaintiffs' counsel as class counsel;
- b. An order awarding statutory damages, and attorneys' fees and costs under 15 U.S.C. § 1692k;
- c. An order declaring Defendants' conduct unlawful;
- d. An order awarding all other relief that is just, equitable and appropriate.

Respectfully Submitted,

Dated: September 2, 2021

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