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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SHIRLEY FITZGERALD,

a consumer residing in

Multnomah County,

Plaintiff,

v.

**COLUMBIA COLLECTION
SERVICE, INC.,**

a domestic business corporation, and

DAVID SCHUMACHER, its

debt collection attorney,

Defendants.

Case No. 3:14-cv-00944-HU

**UNLAWFUL DEBT COLLECTION
AMENDED COMPLAINT**

15 U.S.C. § 1692 *et seq.*

28 U.S.C. § 2201(a)

ORS 31.230

DEMAND FOR JURY TRIAL

1.

INTRODUCTION

Ms. Fitzgerald, through her attorney Michael Fuller acting as a private attorney general, prosecutes Columbia Collection and Mr. Schumacher as follows:

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2.

PROCEDURAL HISTORY

In June 2009, **Columbia Collection** sued **Ms. Fitzgerald** to collect debt she didn't owe.

3.

In March 2010, the judge ruled against **Columbia Collection** and dismissed the lawsuit.

4.

In January 2013, **Columbia Collection** sued **Ms. Fitzgerald** again, in a second attempt to collect the same debt previously dismissed by the judge with prejudice.

5.

Ms. Fitzgerald never received actual notice of the second lawsuit and **Columbia Collection** applied for a default judgment without her knowledge on June 13, 2013.

6.

Ms. Fitzgerald didn't learn of the second lawsuit until February 2014, when **Columbia Collection** and its debt collection attorney garnished exempt money from her First Tech Federal Credit Union account.

7.

After **Ms. Fitzgerald** challenged the garnishment in March 2014, **Columbia Collection** verbally threatened her. The judge eventually ordered the exempt funds be returned to **Ms. Fitzgerald**. In June 2014, **Columbia Collection's** second lawsuit was dismissed.

8.

Ms. Fitzgerald now demands a jury trial to recover fair compensation from **Columbia Collection** and its debt collection attorney.

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9.

JURISDICTION AND THE PARTIES

The United States District Court for the District of Oregon has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1367 because the FDCPA is a federal law and Ms. Fitzgerald's state law claim forms part of the same controversy as her federal law claim.

10.

Plaintiff Shirley Fitzgerald (Ms. Fitzgerald) is a natural person residing in Multnomah County, Oregon.

11.

Defendant Columbia Collection Service, Inc. (Columbia Collection) is a domestic business corporation, regularly doing business in Multnomah County, and is a licensed debt collector in the State of Oregon.

12.

Defendant David Schumacher (Mr. Schumacher) is a domestic licensed debt collection attorney, regularly doing business in Multnomah County.

13.

The venue and division of this Honorable Court are proper because the majority of Defendants' acts and omissions were directed at Ms. Fitzgerald while she resided in Multnomah County, Oregon.

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14.

FDCPA STRICT LIABILITY

Ms. Fitzgerald is a “consumer” as defined by the FDCPA at 15 U.S.C. § 1692a(3) because she is a natural person allegedly obligated to pay a debt to Columbia Collection. Ms. Fitzgerald’s alleged obligation to pay Columbia Collection is a “debt” as defined by the FDCPA at 15 U.S.C. § 1692a(5) because it arises out of a consumer transaction, namely medical services that were allegedly provided to Ms. Fitzgerald.

15.

Columbia Collection is a “debt collector” as defined by the FDCPA at 15 U.S.C. § 1692a(6) as it regularly represents to consumers that it is attempting to collect a debt on behalf of another, its principal purpose is providing debt collection services to creditors, and it regularly communicates with consumers regarding defaulted debt, which communications include use of the United States mail system.

16.

Mr. Schumacher is also a “debt collector” as defined by the FDCPA at 15 U.S.C. § 1692a(6) as he regularly represents to consumers that he is attempting to collect a debt on behalf of another, his law practice primarily provides debt collection services to others, and he regularly communicates with consumers regarding defaulted debt, which communications include use of the United States mail system.

17.

Defendants’ collection activities directed at Ms. Fitzgerald as alleged in this Complaint are subject to the strict liability provisions of the FDCPA.

18.

FACTUAL ALLEGATIONS

On or around June 15, 2009, Columbia Collection filed a Claim against Ms. Fitzgerald in Small Claims Case No. 09S009132.

19.

Columbia Collection's Claim was an attempt to collect debt including service dates of 11/16/07 and 11/02/07 and 12/16/07.

20.

Prior to trial, Columbia Collection threatened Ms. Fitzgerald in an attempt to coerce her to pay it to settle the Claim.

21.

Ms. Fitzgerald did not owe the debt included in the Claim, and on March 1, 2010, the judge filed a judgment dismissing the Claim with prejudice.

22.

On or around January 23, 2013, Columbia Collection filed a second Claim against Ms. Fitzgerald in Small Claims Case No. 130001842S.

23.

Columbia Collection's second Claim was an attempt to collect debt, a portion of which had been previously dismissed with prejudice, including service dates of 11/16/07 and 11/02/07 and 12/16/07.

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24.

Ms. Fitzgerald's home address at 10835 NW Brooks Rd., Portland, Oregon 97231 has not changed from April 1991 to the date of this Complaint.

25.

Ms. Fitzgerald never received knowledge of the second Claim and Columbia Collection pursued a default judgment against her, without her knowledge, on June 13, 2013.

26.

Columbia Collection's pursuit of a default judgment against Ms. Fitzgerald was unfair because Columbia Collection could readily see her home address had not changed from the first and second Claims, and because Columbia Collection knew she previously successfully defended its first Claim and it had no reason to believe she would not similarly defend the second Claim.

27.

On February 4, 2014, Mr. Schumacher signed a writ of garnishment on Columbia Collection's behalf to collect on the default judgment entered in Case No. 130001842S.

28.

Ms. Fitzgerald never learned of the second Claim until her First Tech Federal Credit Union account was garnished by Defendants on February 10, 2014.

29.

The writ of garnishment was communicated to Ms. Fitzgerald directly, and to First Tech Federal Credit Union.

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30.

The writ of garnishment contained a false certification that \$4,275.98 was lawfully subject to collection against Ms. Fitzgerald.

31.

The writ of garnishment contained a false certification that good ground existed to support issuance of the writ.

32.

The writ of garnishment contained a false certification that Defendants had reasonable knowledge of the facts and made a reasonable inquiry before signing the writ.

33.

On February 20, 2014, Ms. Fitzgerald filed a challenge to the writ of garnishment because her First Tech Federal Credit Union account contained exempt funds.

34.

After a hearing on March 14, 2014, Columbia Collection's agent refused to state her name. Instead, the agent demanded Ms. Fitzgerald's phone number and verbally oppressively threatened Ms. Fitzgerald, including and not limited to saying, "I am going to hunt you down to the ends of the Earth." and, "We are going to get you."

35.

On March 14, 2014, the judge ordered the exempt funds be returned to Ms. Fitzgerald.

36.

After Columbia Collection learned Ms. Fitzgerald hired an attorney to defend herself, Columbia Collection caused the default judgment to be set aside.

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37.

On June 23, 2014, the judge entered a dismissal judgment terminating Columbia Collection's second Claim in Ms. Fitzgerald's favor.

38.

Columbia Collection wrongfully intended to obtain a default judgment on its second Claim against Ms. Fitzgerald without her knowledge.

39.

Columbia Collection knew and had reason to know its second Claim against Ms. Fitzgerald lacked any legal or factual merit.

40.

Columbia Collection lacked probable cause to prosecute its second Claim against Ms. Fitzgerald because it knew a portion of the debt had been previously dismissed with prejudice.

41.

Columbia Collection played the odds by wrongfully using civil proceedings against Ms. Fitzgerald in the hopes that she wouldn't find out until it was too late.

42.

FDCPA VIOLATION

Columbia Collection violated the FDCPA by unfairly attempting to collect previously dismissed debt through the filing of its second Claim and pursuit of judgment against Ms.

Fitzgerald.

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43.

Columbia Collection's second Claim violated the FDCPA by falsely representing that Ms. Fitzgerald owed previously dismissed debt.

44.

As recently as February 2014, Columbia Collection violated the FDCPA by communicating false credit information about Ms. Fitzgerald to the credit reporting agencies.

45.

The credit information was false because Ms. Fitzgerald did not owe the previously dismissed debt.

46.

Columbia Collection knew and should have known the credit information it reported was false because it knew and should have known Ms. Fitzgerald did not owe the previously dismissed debt.

47.

Defendants violated the FDCPA because the writ of garnishment was not reasonably necessary to effectuate a valid postjudgment judicial remedy, and falsely communicated to First Tech Federal Credit Union that Ms. Fitzgerald owed previously dismissed debt.

48.

Defendants violated the FDCPA because the writ of garnishment attempted to collect debt from Ms. Fitzgerald's account that had been previously dismissed with prejudice.

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49.

Defendants violated the FDCPA because the writ of garnishment contained a false representation that Ms. Fitzgerald owed debt that had been previously dismissed with prejudice.

50.

Columbia Collection violated the FDCPA by attempting to oppress Ms. Fitzgerald through its use of threats on March 2014, in connection with its collection of debt.

51.

FAIR COMPENSATION

Mr. Schumacher's violation of the FDCPA caused Ms. Fitzgerald actual damages including, but not limited to, stress, frustration, damage to her reputation, an improper credit union fee, invasion of privacy, and other damages consistent with unfair debt collection in an amount to be determined by a jury. Ms. Fitzgerald has a right to recover these damages pursuant to 15 U.S.C. § 1692k(a)(1).

52.

Columbia Collection's violation of the FDCPA and wrongful use of civil proceedings caused Ms. Fitzgerald actual damages including, but not limited to, stress, frustration, damage to her reputation, an improper credit union fee, invasion of privacy, damage to her credit, lower credit scores, lost opportunities to receive credit and refinance, expenses incurred defending against its unfounded legal claims, and other damages consistent with unfair debt collection in an amount to be determined by a jury. Ms. Fitzgerald has a right to recover these damages pursuant to 15 U.S.C. § 1692k(a)(1), Oregon common law, and ORS 31.230.

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53.

Ms. Fitzgerald has a right to recover additional statutory damages pursuant to 15 U.S.C. § 1692k(a)(2). Ms. Fitzgerald has a right to recover her costs and a reasonable attorney's fee incurred in prosecuting the FDCPA claim, pursuant to 15 U.S.C. § 1692k(a)(3).

54.

Columbia Collection has a habit and routine practice of violating the laws governing debt collection in connection with its conduct in small claims court. For example, see Exhibit 1; Case No. 3:13-cv-01577-PK; Case No. 3:14-cv-00006-AC, etc.

55.

Columbia Collection's intentional conduct as described above constitutes an extreme, outrageous, and malicious attempt to profit through misuse of the Oregon civil court system.

56.

Columbia Collection's wrongful use of civil proceedings provides it an unfair advantage over other collectors in the community that choose to follow the law.

57.

As a result of Columbia Collection's malicious wrongful use of civil proceedings as described above, Columbia Collection should be required to pay punitive damages according to the harm it caused Ms. Fitzgerald.

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58.

CAUSES OF ACTION

CLAIM ONE AGAINST COLUMBIA COLLECTION

UNLAWFUL DEBT COLLECTION

(15 U.S.C. § 1692k)

Ms. Fitzgerald re-alleges all of the above paragraphs by reference.

59.

Columbia Collection's conduct as alleged above failed to comply with the FDCPA, including and not limited to the provisions contained in § 1692c, d, e, and f.

60.

Columbia Collection's failure to comply with the FDCPA caused Ms. Fitzgerald actual damages as alleged above. As a result, Ms. Fitzgerald is entitled to recover fair compensation, including actual damages, statutory damages, costs and a reasonable attorney's fee pursuant to 15 U.S.C. § 1692k.

61.

CLAIM TWO AGAINST DAVID SCHUMACHER

UNLAWFUL DEBT COLLECTION

(15 U.S.C. § 1692k)

Ms. Fitzgerald re-alleges all of the above paragraphs by reference.

62.

Mr. Schumacher's conduct as alleged above failed to comply with the FDCPA, including and not limited to the provisions contained in § 1692c, e and f.

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63.

Mr. Schumacher's failure to comply with the FDCPA caused Ms. Fitzgerald actual damages as alleged above. As a result, Ms. Fitzgerald is entitled to recover fair compensation, including actual damages, statutory damages, costs and a reasonable attorney's fee pursuant to 15 U.S.C. § 1692k.

64.

CLAIM THREE

DECLARATORY RELIEF AGAINST COLUMBIA COLLECTION

(28 U.S.C. § 2201(a))

Ms. Fitzgerald re-alleges all of the above paragraphs by reference.

65.

Ms. Fitzgerald requests this Honorable Court issue the following declarations on the record so she can ensure accurate credit reporting in the future, and clear her name with her credit union:

- a. The credit information Columbia Collection reported about Ms. Fitzgerald from June 2013 to February 2014 concerning her previously dismissed debt was false.
- b. Columbia Collection's writ of garnishment to First Tech Federal Credit Union falsely communicated to First Tech Federal Credit Union that Ms. Fitzgerald owed previously dismissed debt.

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66.

CLAIM FOUR

WRONGFUL USE OF CIVIL PROCEEDINGS AGAINST COLUMBIA COLLECTION

(ORS 31.230 and Oregon Common Law)

Ms. Fitzgerald re-alleges all of the above paragraphs by reference.

67.

Based on Columbia Collection's malicious wrongful use of civil proceedings as alleged above, Ms. Fitzgerald is entitled to an award of actual and punitive damages.

68.

DEMAND FOR JURY TRIAL.

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WHEREFORE, Ms. Fitzgerald seeks order and judgment against Defendants as follows:

- A. An award of compensatory damages against Mr. Schumacher resulting from the harm Mr. Schumacher's FDCPA violation caused Ms. Fitzgerald;
- B. An award of compensatory damages against Columbia Collection resulting from the harm Columbia Collection's FDCPA violation caused Ms. Fitzgerald;
- C. An award of statutory damages against both Defendants;
- D. An award reimbursing Ms. Fitzgerald for the costs of prosecuting the FDCPA claim, together with a reasonable attorney's fee, against both Defendants;
- E. Declaratory relief as requested in paragraph 65 against Columbia Collection;
- F. An award of compensatory damages resulting from the wrongful use of civil proceedings, including expenses Ms. Fitzgerald incurred defending against the unfounded legal claims, against Columbia Collection;
- G. An award of punitive damages resulting from the wrongful use of civil proceedings against Columbia Collection; and
- H. Any other equitable relief this Honorable Court may determine to be fair and just.

DATED: July 11, 2014

RESPECTFULLY FILED,

s/ Michael Fuller

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