

further payments as of May 31, 1997.

Wherefore, Defendant prays that plaintiff's cause of action be dismissed with prejudice at plaintiff's costs, and that plaintiff be sent forth without remedy, and for such other, and further relief as this court deems proper in all the circumstances.

COUNTERCLAIMS

1. Plaintiff/Counter-defendant Debt Collector, LLC (Debt Collector) is a corporation actively involved in and conducting business in the Your County.
4. At all times relevant to this counterclaim, Debt Collector has been regularly engaged in purchasing debts from creditors and instituting legal actions against debtors to collect the debts, and is, accordingly, a "debt collector" as defined by the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. sec. 1692a.
5. Upon information and belief, Debt Collector purchased a delinquent debt allegedly due an original creditor, with no knowledge whatsoever of the legitimacy or underlying facts of that debt.
6. Upon information and belief, Debt Collector has now, and at the time of filing its petition against plaintiff, had, no information whatever regarding the validity of the debt it alleges was due and owing from defendant.

COUNT I - VIOLATION OF SECTION 1234, Your State Code

7. Defendant realleges and incorporates each of the preceding allegations, 1-6, as if fully stated herein.
8. Pursuant to Sec. 408.556 State Code, plaintiff was required to allege each fact of defendant's alleged default.
9. Plaintiff has failed to allege any facts showing that it is the true party in interest of the debt in question or whether it has legal capacity to sue in the state of your state.
10. Plaintiff failed to allege any facts regarding how the debt was incurred, when any payments were made by defendant and in what amounts, or any information regarding the composition of the alleged debt.
11. Additionally, plaintiff drafted the petition with the false claim that it was the actual debtor and indicating that some agent of plaintiff had personal knowledge of defendant's alleged debt, even though the debt was merely assigned to plaintiff and plaintiff did not have any personal knowledge as indicated.
12. Further, plaintiff failed to attach a copy of a contract to the petition showing any liability of defendant, although it falsely alleged that it did so.
13. Plaintiff's petition was drafted in a manner, and with an intent, to deceive the

court and defendant into believing that plaintiff had information sufficient to support a default judgment, whereas in fact plaintiff does not.

14. Plaintiff's violation of Sec. 1234, State Code is on-going, extensive and intentional, and exhibits an evil motive or reckless indifference to the rights of defendant, as well as to consumers generally.

15. Plaintiff's actions constitute a pattern and practice of unlawful and oppressive misconduct, which is deliberately misleading the defendants and courts regarding the validity of plaintiff's petitions.

16. As a result of plaintiff's violation of sec. 1234 State Code, defendant suffered a loss of money or property in that defendant incurred attorney's fees, various expenses, loss of time and work, and emotional embarrassment and suffering, and anxiety, over the bringing of plaintiff's lawsuit.

Wherefore, defendant prays this honorable Court to enter a judgment against plaintiff awarding defendant actual and punitive damages, attorney's fees for the amount of time reasonably expended in pursuit of this claim, for consequential and incidental damages, costs of suit, and for such other and further relief as this court deems appropriate in all the circumstances.

COUNT II - FDCPA VIOLATION

17. Defendant realleges and incorporates as if fully set forth herein paragraphs 1-16 of this Counterclaim.

18. Debt Collector is a debt collector within the scope and meaning of the FDCPA.

19. The petition and affidavit are means (as defined by the FDCPA, sec. 1692e) used by plaintiff to collect a debt allegedly owed by defendant, and further are "communications" as defined by the FDCPA, 1692a(2).

20. In its attempt to collect an alleged debt from defendant, Debt Collector violated the Fair Debt Collection Practices Act in the following ways:

a. By falsely, deceptively or misleadingly stating or implying that it was the actual creditor, rather than merely an assignee of a debt. [By not including the statement that the debt had been assigned to it]

b. By falsely, deceptively or misleadingly implying or suggesting that its agent had actual knowledge of the facts supporting plaintiff's petition. [referring to the custom of some plaintiffs to include an affidavit claiming that the debt was "true and correct" or fair or accurate.]

c. By falsely, deceptively and misleadingly pleading that the amount of

money being sought was “justly due and owing” when such information was outside the knowledge of any agent of plaintiff.

d. By attempting to collect compound interest when such was not allowed by the contract attached to plaintiff’s petition. [by seeking “interest” on the entire amount supposedly due, which already included interest]

e. By falsely, deceptively or misleadingly stating that the “contract” attached to its petition had any relationship to defendant, whereas in fact the document attached is not a contract at all and has no relation to defendant. [referring to the custom of some debt collectors to attach “form” contracts to the petition along with a claim that they were contracts entered by defendants.]

f. By attempting to collect interest on attorney fees. [by seeking interest as of a certain date on an amount which included attorney’s fees]

g. By attempting to collect attorney fees that have not, on information and belief, been actually expended, or which have no reasonable basis for being charged.

h. By attaching an affidavit containing false or misleading statements.

i. By attaching an affidavit misleadingly implying that the affiant possessed actual knowledge of the debt involved in this litigation.

j. By attaching an affidavit to the petition served upon the court, but not providing such document to defendant. [referring to an attempt by some debt collectors to provide information to the court without serving it upon the defendant. Incidentally, this is also an “ex parte” communication, and unfair as a breach of civil procedure]

k. By filing an unsubstantiated petition in violation of 15 U.S.C. sec. 1692d and 1692e.

21. As a direct and proximate result of plaintiff’s violation of the FDCPA, defendant has suffered emotional distress, inconvenience, embarrassment, humiliation and pain and suffering, as well as financial costs incident to defending the suit brought against him. Wherefore, defendant prays this honorable court to enter a judgment against plaintiff awarding defendant actual and statutory damages, reasonable attorney’s fees, costs of suit, and for such further and additional relief as this court deems just in all the circumstances. Respectfully submitted,

Joe Consumer

Your address

Your City, State zip

(Your) phone number

Your email address

CERTIFICATE OF SERVICE

The undersigned certifies that he has served upon plaintiff a copy of the foregoing document by first class mail, postage prepaid, to Name and Address of lawyer representing Debt Collector, on this ___ day of _____, 20__.
